

96-174

FUNERAL INDUSTRY: FTC PROPOSED RULEMAKING

NEWARK PUBLIC LIBRARY

NOV 17 1980

HEARINGS

BEFORE THE

U. S. GOVT. PUBS.
DEPOSITORY 376

**SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS**

OF THE

**COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES**

NINETY-SIXTH CONGRESS

SECOND SESSION

FEBRUARY 18 AND 21, 1980

Serial No. 96-174

Printed for the use of the
Committee on Interstate and Foreign Commerce



Y4.In 84.



FUNERAL INDUSTRY: FTC PROPOSED RULEMAKING

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
HEARINGS
BEFORE THE
SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES
NINETY-SIXTH CONGRESS
SECOND SESSION

FEBRUARY 13 AND 21, 1980

Serial No. 96-174

Printed for the use of the
Committee on Interstate and Foreign Commerce



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON: 1980

00-840 O

best copy available

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HARLEY O. STAGGERS, *West Virginia, Chairman*

JOHN D. DINGELL, Michigan	JAMES T. BROYHILL, North Carolina
LIONEL VAN DEERLIN, California	SAMUEL L. DEVINE, Ohio
JOHN M. MURPHY, New York	TIM LEE CARTER, Kentucky
DAVID E. SATTERFIELD III, Virginia	CLARENCE J. BROWN, Ohio
BOB ECKHARDT, Texas	JAMES M. COLLINS, Texas
RICHARDSON PREYER, North Carolina	NORMAN F. LENT, New York
JAMES H. SCHEUER, New York	EDWARD R. MADIGAN, Illinois
RICHARD L. OTTINGER, New York	CARLOS J. MOORHEAD, California
HENRY A. WAXMAN, California	MATTHEW J. RINALDO, New Jersey
TIMOTHY E. WIRTH, Colorado	DAVE STOCKMAN, Michigan
PHILIP R. SHARP, Indiana	MARC L. MARKS, Pennsylvania
JAMES J. FLORIO, New Jersey	TOM CORCORAN, Illinois
ANTHONY TOBY MOFFETT, Connecticut	GARY A. LEE, New York
JIM SANTINI, Nevada	TOM LOEFFLER, Texas
ANDREW MAGUIRE, New Jersey	WILLIAM E. DANNEMEYER, California
EDWARD J. MARKEY, Massachusetts	
THOMAS A. LUKEN, Ohio	
DOUG WALGREN, Pennsylvania	
ALBERT GORE, Jr., Tennessee	
BARBARA A. MIKULSKI, Maryland	
RONALD M. MOTT, Ohio	
PHIL GRAMM, Texas	
AL SWIFT, Washington	
MICKEY LELAND, Texas	
RICARD C. SHELBY, Alabama	
ROBERT T. MATSUI, California	

KENNETH J. PAINTER, *Acting Chief Clerk and Staff Director*

ELEANOR A. DINKINS, *Assistant Clerk*

WILLIAM L. BURNS, *Printing Editor*

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

BOB ECKHARDT, *Texas, Chairman*

JIM SANTINI, Nevada	NORMAN F. LENT, New York
ALBERT GORE, Jr., Tennessee	MATTHEW J. RINALDO, New Jersey
PHILIP R. SHARP, Indiana	MARC L. MARKS, Pennsylvania
ANTHONY TOBY MOFFETT, Connecticut	TOM CORCORAN, Illinois
ANDREW MAGUIRE, New Jersey	WILLIAM E. DANNEMEYER, California
DOUG WALGREN, Pennsylvania	JAMES T. BROYHILL, North Carolina
RONALD M. MOTT, Ohio	(Ex Officio)
MICKEY LELAND, Texas	
TIMOTHY E. WIRTH, Colorado	
EDWARD J. MARKEY, Massachusetts	
HARLEY O. STAGGERS, West Virginia	
(Ex Officio)	

MARK J. RAABE, *Chief Counsel/Staff Director*

MARY T. FOLDES, *Counsel*

PETER KINZLER, *Counsel*

CLAIRE WHITNEY, *Minority Staff Assistant*

CONTENTS

Hearings held on:		Page
February 13, 1980		1
February 21, 1980		91
Testimony of:		
Bowman, John, Louisville, Ky.		35
Clemmer, Elizabeth, executive director, Continental Association of Funeral and Memorial Societies		267
Cohen, Rebecca A., president, Continental Association of Funeral and Memorial Societies		267
Eposito, John, special counsel, New York State Consumer Protection Board		72
Hughes, Peter W., legislative counsel, National Retired Teachers Association and American Association of Retired Persons		206
Keith, Royal, past president, National Funeral Directors Association		231
Kramer, Albert H., Director, Bureau of Consumer Protection, Federal Trade Commission		128
Messer, Betsy, legislative representative, National Retired Teachers Association and American Association of Retired Persons		206
Murchison, David C., legal counsel, National Selected Morticians		326
O'Keefe, Magr. Richard W., Arizona State Board of Funeral Directors and Embalmers		53
Pont, Larry, producer, WLS-TV, Ogden Dunes, Ind.		67
Reveley, Dr. James, San Antonio, Tex.		22
Rodemeyer, Michael L., managing attorney, funeral industry project, Federal Trade Commission		128
Rogers, Johnnie B., general counsel, Texas Funeral Directors Association ..		320
Sheehan, Eleanor, Washington, D.C.		2
Sheets, Gary L., assistant attorney general and legal counsel, Arizona State Board of Funeral Directors and Embalmers		53, 55
Shulman, Eric, National Council of Senior Citizens		399
Trimble, Eric R., president, Illinois Funeral Directors Association		231, 233
Williams, Larry C., Sr., legal counsel, National Funeral Directors and Morticians Association		326, 378
Additional material submitted for the record by:		
Arizona State Board of Funeral Directors and Embalmers, attachment to Mr. Sheets' prepared statement, letter dated October 10, 1979, to Congressman Eldon Rudd re support of Federal Trade Commission funeral industry rule		59
Continental Association of Funeral and Memorial Societies:		
Attachment to Ms. Cohen's and Ms. Clemmer's joint prepared statement: Excerpts from book entitled "The History of American Funeral Directing"		285
Letter dated March 21, 1980, from Ms. Clemmer to Congressman Gore re additional comments on consumer complaints and funerals ..		316
Federal Trade Commission:		
Attachments to Mr. Kramer's prepared statement:		
Comparison of State law provisions with proposed FTC funeral rule, chart, tables		141
Funeral rule deletions and major modifications, 1975-79, chart....		187
Letter dated March 31, 1980, from Mr. Kramer to Chairman Eckhardt enclosing requested supplemental information re funeral rule proceedings		170
Letter and attachment dated April 30, 1980, from Mr. Kramer to Chairman Eckhardt re response to Congressman Lent's inquiry about the FTC policy planning approach to rulemaking		203

Additional material submitted for the record by—Continued

National Selected Morticians:

Attachments to Mr. Murchison's prepared statement:

Exhibit A—Bulletin dated December 1979 to presidents of Continental Association of Funeral and Memorial Societies re proposed FTC trade rule.....	362
Exhibit B—Virginia price survey.....	364
Exhibit C—Texas price survey.....	366
Exhibit D—Code of good funeral practice.....	370
Exhibit E—FTC fact sheet dated September 8, 1977, entitled "State Legislation to Combat Unfair Trade Practices".....	371
Exhibit F—State government consumer offices.....	373
Letters dated February 25 and March 25, 1980, and attachments, from Mr. Murchison to Subcommittee on Oversight and Investigations re proposed FTC trade regulation, rule on funeral industry practices.....	387
New York State Consumer Protection Board:	
Attachment to prepared statement of John Esposito, results of 1974 survey by the New York Public Interest Research Group, tables.....	75
Response by Mr. Esposito to subcommittee inquiry re New York State disciplinary process for funeral directors.....	87
Oversight and Investigations Subcommittee, Committee on Interstate and Foreign Commerce:	
Letter dated September 11, 1978, from Robert F. Stephens, attorney general, Commonwealth of Kentucky, to Isaiah T. Creswell, director, Federal-State and Consumer Relations, Federal Trade Commission, re comment on proposed regulations relative to funeral directors.....	51
Letter dated February 11, 1980, from Allen I. Olson, attorney general, State of North Dakota, to Congressman Lent re Federal intervention in the regulation of funeral and related services.....	94
Letter dated February 11, 1980, and attachments, from Rufus L. Edmisten, attorney general, State of North Carolina, to Congressman Lent re proposed FTC trade regulation rule for funeral industry practices.....	95
Louisville Funeral Directors Association, brochure prepared by the Jefferson County Allied Burial Council entitled: "Should I Plan Ahead for Death?".....	45
R. D. Copeland Funeral Service, rebuttal to Mrs. Sheehan's testimony.....	9

FUNERAL INDUSTRY: FTC PROPOSED RULEMAKING

FEBRUARY 13, 1980

**HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.**

The subcommittee met, pursuant to notice, at 11 a.m., in room 2322, Rayburn House Office Building, Hon. Albert Gore, Jr., presiding (Hon. Bob Eckhardt, chairman).

Mr. GORE. The subcommittee will come to order.

We apologize for the delay and appreciate the patience of those here.

Chairman Eckhardt is testifying before the Accounts Subcommittee of the House Administration Committee. This is a once-a-year occurrence. The funds with which this subcommittee operates are the subject of discussion there. They have experienced yet another delay. He has asked me to go ahead and commence the hearing pending his arrival shortly.

I would like to open with the statement that Chairman Eckhardt wanted to make.

Today, the Subcommittee on Oversight and Investigations starts the first of a series of hearings on the rulemaking procedures of Federal agencies. The many agencies under our jurisdiction have highly varying rulemaking statutes. The purpose of these hearings will be to determine which procedures, or portions of procedures, are working effectively and then whether it would be appropriate to apply the successful procedures to some or all of the other agencies.

Traditionally, agency rulemaking has been either of the legislative variety—requiring little more than that the agency provide notice of a proposed rule and an opportunity for public comment—or adjudicative, where full trial-type procedures are required.

The most important innovative experiment in rulemaking in recent history started with enactment of the Magnuson-Moss warranty—Federal Trade Commission Improvement Act in 1975. Faced with allegations from the business community that the case-by-case adjudications carried out by the FTC often created unfair competitive advantage for persons not subject to an order, the Congress moved to encourage the Commission to use its rulemaking authority in situations where violations of the FTC Act were common in an industry.

Furthermore, responding to the business community's desire for greater opportunities to be heard in such procedures, the Congress adopted the Magnuson-Moss act's hybrid rulemaking approach.

This approach permits persons to present testimony at a hearing, to cross-examine witnesses and to submit rebuttal comments; and it requires the FTC to demonstrate to a court that its rule is supported by substantial evidence on the record as a whole. Chairman Eckhardt was a major author of that legislation and he and we on the subcommittee are very interested in seeing how it is working.

The subcommittee will start its general rulemaking inquiry with 2 days of hearings examining the FTC's proposed trade regulation rule on funeral industry practices. This rule, which has been in rulemaking for almost 5 years and whose transcript exceeds 45,000 pages, stems from a concern about the peculiar vulnerability of people when they are burying loved ones. In such times, it is essential that consumers be able to secure price information easily and that they not be manipulated into purchasing a more expensive funeral than they would have chosen in times of less stress.

In the second day of these hearings, on February 21, we will explore with the Federal Trade Commission how this rule evolved, with particular emphasis on their view of how the Magnuson-Moss procedures worked and where they fell short of their objective, as well as how they can be altered to serve their intended purpose. The subcommittee also will hear from many of the participants in that proceeding about their experiences and get their assessment of the effectiveness of this novel rulemaking procedure. In addition, the subcommittee will look at a feature of the procedures that fit into another one of our major investigations—cost-benefit analysis.

However, before we examine the Magnuson-Moss procedures, today we will seek to find answers to the following questions: First, what is the impact of abuses by funeral directors on individuals; Second, how widespread are such abuses; and third, what actions have the States taken to correct any abuses?

Our first witness this morning will be Mrs. Eleanor Sheehan. Mrs. Sheehan was a witness during the FTC hearings.

Mrs. Sheehan, if you would come forward to the witness table, please.

In accordance with the practice of our subcommittee would you remain standing and raise your right hand and be sworn?

Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mrs. SHEEHAN. Yes.

Mr. GORE. Thank you very much for being with us today.

I appreciate the effort you have put into your testimony and your willingness to come here today.

Would you tell us the experiences which you have had in this area after your mother's death?

TESTIMONY OF ELEANOR SHEEHAN, WASHINGTON, D.C.

Mrs. SHEEHAN. Although there are many aspects of my experience with a funeral home that I found objectionable, I will refer only to some major aspects in order to confine my remarks to 10 minutes.

My mother, whom I was visiting in a small town near Pittsburgh, had a stroke and lay in the hospital for almost 6 weeks. After a week, when it appeared she might not survive, I phoned a local funeral home to get information about funeral costs and was

informed that no information could be given over the phone and that I must come in for a personal consultation.

About a week later I stopped in without an appointment on my way to the hospital. I was with the undertaker's assistant for about 5 minutes. He said that since costs are so variable it was difficult to determine costs until you actually make arrangements.

Since he appeared reluctant to give out information, I said that surely he could at least tell me how much caskets cost, to which he replied \$400 and up. This is the only information I received in two attempts.

A second major area of difficulty was the failure to inform me of Pennsylvania State law regarding embalming requirements. A week before my mother died, I went to make prearrangements. He simply told me the cost of embalming as he went down the check list as though it were a foregone conclusion.

Ignorant as I was of funeral procedures, I simply assumed this was a State requirement for public health reasons. Since I have a feeling of repugnance for embalming and cosmetology performed on deceased persons it distressed me to read in the Evening Star some weeks later that embalming is not mandatory.

Since this was a private funeral with the casket never opened, given alternative choices, such as burial within 24 hours, I would have wanted to consider these.

I feel that State law should have been told to me routinely and as a matter of course, and within that context I should have been free to decide how the burial was to be handled.

I wrote to the undertaker for an explanation but I never received a reply.

A third area of difficulty was a lack of price tags on the caskets. I had to keep repeating price requests as I compared caskets, which added measurably to the strain of casket selection. I constantly had to fight down the feeling of "just pay anything to get out of here."

As to the comment repeated to me once prior to casket selection and once while in the casket room, "Consider what the neighbors will think when they see the casket at church," I don't know what one can do except to talk about it so that the public will be aware of this type of manipulation and be prepared to cope with it.

Finally, I object to the failure to provide me with services to which I was entitled. The funeral director turned away flowers sent by relatives and friends to the funeral home, which saddened and humiliated me.

When my husband phoned him angrily he stated that it was not his policy to handle flowers when there was no public viewing. However, he said nothing of this to me in the interview. Moreover, my bill shows that handling of flowers was a service included in a lump sum category called professional services costing \$366.

Based on my experience, I believe the proposed FTC rulemaking is modest and reasonable and merely attempts to open up the funeral industry to some normal business practices.

The Russo amendment passed by the House I consider unfortunate because, based on my experience, it is not the funeral industry that needs protection from the FTC but the consumer who needs protection from the funeral industry.

Mr. GORE. Thank you very much for your testimony.

The first question which occurs to me is this: Did you shop around? Did you try any other funeral homes?

Mrs. SHEEHAN. There is another funeral home in the town. My mother died before I could go to the other one and have another one of these lengthy consultations. The problem was the time factor. I simply did not have the time to go through another 2 1/4- or 3-hour consultation immediately.

I made these arrangements on a Monday afternoon. My mother died on a Saturday morning. I simply did not have the time nor the strength and all the problems I had to attend, the long hospital visits, having to deal with doctors—there simply wasn't time and I didn't have the strength to immediately go through this again.

Mr. GORE. In other words, because of the emotional condition that you faced and because of the time demands put upon you due to the circumstances, you just did not feel that you had an opportunity to go around to different businesses and compare prices, and so forth?

Mrs. SHEEHAN. Well, I intended to go to the other funeral home as soon as I had some time. However, this is the whole problem, the time factor. When you are dealing with a person who is in the hospital who may die and you are spending long hours in the hospital, you are having to deal with doctors, hospital administrators, lawyers, taking care of all kinds of personal business, you simply do not have the time to have to fight for every scrap of information.

Mr. GORE. Yet you anticipated this situation and attempted to call on the telephone to get some indication of what the charges might be. Is that correct?

Mrs. SHEEHAN. Yes. I thought I was acting with a certain amount of foresight because, after all, there was no certainty at this time that my mother would die. I was trying to act with some foresight to get information and arrange things ahead of time in the event of death.

Mr. GORE. But you found you could not get information?

Mrs. SHEEHAN. I found it was a struggle—a time-consuming struggle—to try to get some very basic information that I think should have been available to me very readily, that covered points of law that I think I should have been entitled to, to be told immediately. I don't feel I should have had to go through so much trouble to get some very essential and basic information.

Mr. GORE. Had you ever arranged a funeral before?

Mrs. SHEEHAN. No.

Mr. GORE. And that is another reason you tried to prearrange your mother's burial?

Mrs. SHEEHAN. Yes, in the attempt to try to alleviate a certain amount of stress.

Mr. GORE. How long were you at the Copeland Funeral Home when you went there personally to inquire about prices?

Mrs. SHEEHAN. The first time?

Mr. GORE. Yes.

Mrs. SHEEHAN. Just about 5 minutes.

Mr. GORE. And the second time?

Mrs. SHEEHAN. Two and a half hours.

Mr. GORE. What did you do in that time? The purpose of your second visit, which lasted 2½ hours, was to try to—

Mrs. SHEEHAN. To make definite arrangements.

Mr. GORE. What did you do during those 2½ hours?

Mrs. SHEEHAN. Well, first we went down the check list. I was told about the types of concrete liners that were required. I was told the three price categories.

Subsequently I learned that I should have been shown these, and they were never shown me. I simply selected by what the undertaker's assistant told me.

Then, of course, there was casket selection.

Mr. GORE. Yes. How was that handled?

Mrs. SHEEHAN. I was taken into a casket selection room in which there were approximately a dozen, possibly more, caskets. They were not arranged in any particular order that I could discern as to price category.

Prior to casket selection, of course, in a conference room I was told to consider what the neighbors think when they see the casket.

Mr. GORE. What were the words used there?

Mrs. SHEEHAN. The exact words were: "Consider what the neighbors will think when they see the casket at the church." I was told that a second time when we went into the casket room, so I saw these dozen or more caskets and looked at them. I wasn't satisfied really with any of them. They appeared to me to be either unattractive or too expensive or, in some cases, both.

Undecided as I was, I was finally taken into another room that appeared to be a storage room in which there were perhaps four or a half dozen more caskets. They appeared to be pretty much the same as what was outside. The last casket that I was shown was one which was sitting on the floor covered with a see-through plastic. This was quite a nice-looking casket, wooden covered with a gray cloth covering which was more reasonably priced than those I saw in the main casket selection room. I chose that. It did appeal to me. I thought it was attractive and very suitable.

Mr. GORE. What was your reaction when the person advised you to consider what the neighbors would think when they saw the kind of casket you selected?

Mrs. SHEEHAN. Well, I recognized it as a sales technique, as a means of manipulating me in my grief into buying a more high-priced casket.

Mr. GORE. What did you finally end up paying for the funeral?

Mrs. SHEEHAN. \$1,200.

Mr. GORE. \$1,200?

Mrs. SHEEHAN. Yes.

Mr. GORE. Were you ever given an itemized price list?

Mrs. SHEEHAN. I was given—it is not what I consider a pen itemized price list. I have it in my handbag here. It is a price list in which certain services are lumped into categories. You pay for certain categories.

In my case, the thing that really bothered me so much was the fact that I thought the funeral undertaker was completely insensitive in refusing to handle flowers. This, of course, was a service that I was also paying for. It is under the category called profes-

sional services. There are eight or nine categories there. If you like I can read them off to you.

Mr. GORE. I have a copy of it—professional services, which includes handling flowers, \$20.

Facilities equipment and merchandise, including use of visitation room, \$30; automotive equipment is \$90; casket as selected, \$215; outside receptacle, \$225; clothing, \$45. What is the clothing?

Mrs. SHEEHAN. This was a gown. I was given three price categories from which to select and I selected the middle price category.

Mr. GORE. Cemetery charges, \$125; certified copies of death, \$10; honorarium, \$25. What is the honorarium for?

Mrs. SHEEHAN. To the priest.

Mr. GORE. Text service, \$40.

Additional items ordered later—limousine service, \$40. It adds up to \$1,211.

Mrs. SHEEHAN. Under the category "professional services" I was entitled to the handling of flowers. He refused to handle the flowers. He never told me he was going to do this. He certainly never deducted it from the bill, either. In other words, he could decide willy-nilly not to handle those flowers but I was obligated to pay for it, anyway.

Mr. GORE. You said in your statement that embalming was offensive to you and the cosmetic workings because of the fact the casket would be closed. Yet you went ahead with this procedure. Why was that?

Mrs. SHEEHAN. Primarily because I must confess I was pretty ignorant and I had to learn everything the hard way subsequently. I had this feeling of distaste. Yet I felt, not being given any other information, that it was probably a State law for public health reasons. I simply assumed that. He never informed me in any way what alternatives there might be.

It was simply assumed and he made the presumption she was to be embalmed. There was no alternative possibility. I had no reason to believe that there even were other alternative possibilities.

If he had sat down and told me what the State law was I would have had time, my mother was still living and I would have had the time to think this through and within the context of State law to decide how I wanted the burial to be handled.

Mr. GORE. I asked you about the 2½ hours you spent there. Let me ask you about the first meeting which you had. First you had a phone call.

Mrs. SHEEHAN. I had a phone call.

Mr. GORE. Your mother had a stroke while you were visiting; is that it?

Mrs. SHEEHAN. Yes.

Mr. GORE. You knew there was a distinct possibility that you would have to arrange a funeral sometime soon, so you called on the telephone. They refused to give you any information.

Mrs. SHEEHAN. Correct.

Mr. GORE. You had to come in person?

Mrs. SHEEHAN. That is correct.

Mr. GORE. While your mother was still in the hospital, then you made a personal trip down to the funeral home. How did you happen to select that funeral home?

Mrs. SHEEHAN. Because it was convenient. It was in the center of town and I had to go down into town several days out of the week, either to handle banking affairs, to see the attorney, to go to the post office, to handle a myriad of things. This was convenient. It was right there. It was on my way to the hospital, also.

There is another reason for it. My father had been buried from this funeral home.

Mr. GORE. Your father had been buried?

Mrs. SHEEHAN. The record of the plot, his service record, and so forth, which are personage to a burial, were located there.

Mr. GORE. Your case is unusual in this respect. Most people don't like to think about these circumstances and consequently they never face these decisions until the time of bereavement when they are in an emotional state. However, you looked ahead. You anticipated this circumstance because of the dire nature of your mother's condition, and you tried to get the information over the phone. You could not get it. They told you you had to come down.

You went down there, you walked into the funeral home. Did you ask for price information at that time?

Mrs. SHEEHAN. Yes. I asked them what funeral costs are. Tell me what it involved.

He said:

You can't tell. Funeral costs are so variable that you really cannot know until you actually sit down to make arrangements.

Mr. GORE. You can't know until your loved one is dead?

Mrs. SHEEHAN. That's right; therefore, I got no information. About the only thing that happened really—well, two things—he pointed to the various plaques in the office, the National Selected Morticians, the National Association of Funeral Directors plaque, and how this indicated the ethical behavior of this funeral home, et cetera. This is the only information I got, except when I really thought that I would pin him down by asking him how much the casket would cost. I thought there was no way he could avoid that question.

Mr. GORE. They told you \$400 and up?

Mrs. SHEEHAN. Right.

Mr. GORE. And subsequently in the store room section you found one for \$215?

Mrs. SHEEHAN. Right.

Mr. GORE. Counsel for the minority? Mr. Lent had another commitment and could not be here.

Claire Whitney is recognized for questions at this time.

Ms. WHITNEY. I appreciate your being here today. You made these similar charges, these same charges, against the Copeland Funeral Home when you appeared before the FTC during the rulemaking proceedings. Is that right?

Mrs. SHEEHAN. Correct.

Ms. WHITNEY. Are you aware Mr. Copeland submitted rebuttal documents to the FTC in response to your charges?

Mrs. SHEEHAN. Yes.

Ms. WHITNEY. And those documents are now part of the FTC records?

Mrs. SHEEHAN. Yes.

Ms. WHITNEY. Mr. Chairman, at Mr. Lent's request I would like to introduce those rebuttal documents.

[Testimony resumes on p. 19.]

[The documents referred to follow:]



R. D. COPELAND

267 Fifth Avenue
phone: 412-264-1590
Coraopolis, Pa 15108

July 24, 1976

Answers to Mrs. Sheehan's statements

Funeral services for Mrs. Jack were private and no notice appeared in a public issue of the newspaper. The following Wednesday, there was an obituary in the local paper (Coraopolis Record). I know the service was private because I acted as a pallbearer along with two other employees.

The only viewing was for the purpose of identification and this was done by Mrs. Jack's son, Henry Jack. At the conclusion, the casket was closed and has remained closed. The reasoning behind the identification was for the protection of the funeral home to make certain we did indeed have Mrs. Jack.

This statement was taken from the rules and regulations of the Penna. State Board of Funeral Directors 13.191 as follows, "Embalming within 24 hours-Any human body held 24 hrs. beyond death shall be embalmed or sealed in a hermetically container that will not allow fumes or odors to escape, or shall be kept under refrigeration, provided however that this does not conflict with any religious belief or medical examination."

"Mrs. Anna Jack died 11/8/75 at 7:40 AM"

She was buried 11/10/75 at 11:15 AM, lapse of hours 51 hrs. + 15 min.

Mrs. Sheehan is confused in terminology

A hermetic sealed container or casket is an airtight clouser by fusion.

Mrs. Sheehan did not select this type of casket. The one she did select was a simple wooden casket with a gray cloth cover.

An outer receptacle is a grave liner or vault and this is not the receptacle they are speaking about in the rules and regulations. The use of a vault is a cemetery requirement and not law. St. Joseph cemetery, the one in which Mrs. Jack was interred, does require such a container and this was used. We have no refrigeration facilities in our funeral home.

Enclosed is an explanation of our charges. We have one of these readily available at each phone with instructions to all our personnel to read this to anyone inquiring about prices of funeral services. Also, we explain that every casket in our selection room (24) have the prices plainly marked on each unit. These units range from \$75.00 to \$2,500.00. To determine the correct amount of the service pertaining to a certain funeral, you must know the exact components of the service to give correct and honest prices over the phone.

You will notice on the copy of the agreement signed by Mrs. Sheehan that she made a selection of two caskets and stated after she talked with her brother she would make her final decision. At the time she signed the statement, I asked her if she wanted it read to her. She said NO. We do this in every case and at the same time ask their preference of payment which is due 30 days from this date. She stated that she would pay it from personal funds. In this instance with a limited service or a less than traditional, we went over very carefully the details of just what was included in this service and what she was paying for. She





R. D. COPELAND
funeral service

Page 2

967 Fifth Avenue
phone: 412-264-1390
Coraopolis, PA 15108

stated that she understood, with this letter and her statements, I don't think she did understand.

The only letter I received from Mrs. Sheehan was dated April 15th and our answer to her followed April 19, 1976.

It is our policy to take the family into the selection room and explain each casket to them in detail and then state to them that we are leaving the room so they will not be influenced by us and our presence in the room. We also feel this is too personal a choice and should be done by the immediate members of the family.

In addition to the 24 units we have in our selection room, we have approximately 24 units in stock at all times. Some of these caskets are duplicates of caskets in our selection room but in different colors. Our hardwoods take as long as a month before they are delivered to us, so we have an adequate range of prices for selection by the families. This room is seldom used other than to move a casket from there into the Selection room and we keep each of these units covered with plastic covers to keep them clean. We would not want any of them to get soiled. In each casket is a price card and this is taken with the family as there memorandum of agreement. (Sample enclosed.)

I feel maybe we did help Mrs. Sheehan in some small way to ease a small portion of her burden by:
Removing her mother from Sewickley Hospital; Making arrangements with her priest for mass of Christian Burial; Making arrangements to have the grave properly opened and place in the right spot in the cemetery next to her husband; Ordering a vault to be placed in the grave; Procuring all of the vital statistics; Recording them in a permanent record; Getting death certificate signed by the doctor; Filing the death certificate; Getting permit for burial; Taking burial permit to cemetery; Paying monies for the opening of the grave, the priest honorarium, tent service, lowering device and lining for the grave, having the family car available and ready within ten minutes to be ready to go to church and have our men act as pallbearers for which no additional fees were charged for this service; Dressing remains and placing her in the casket that was selected by the family. I don't feel Mrs. Sheehan would have been able to care for these above things herself, but I would be interested in finding out if she feels she could have completed these?

We did our very best to be totally honest in our dealing with her and thought we were of service, but I guess we weren't.





R.D. COPELAND

867 Fifth Avenue
Phone: 412-264-4590
Corasopolis, Pa. 15108

July 27, 1976

Answers to Mrs. Sheehan's
statements and my views and
interpretations of the in-
cidents relating to the funeral
services of Anna Jack.

I, William F. Kaiser, a license funeral director in the state of Pennsylvania, license #010062 and employed at the R.D. Copeland Funeral Home in Corasopolis, Pennsylvania for the past sixteen years, wish to express my involvement in the services which were held for the late Mrs. Anna Jack who passed away November 8, 1975 and who was the mother of Mrs. Eleanor Sheehan who has filed a complaint against our funeral home for which I am employed and who has named me along with Mr. Copeland the owner of the fore-mentioned funeral establishment. In as much as I feel that I am a competent funeral director and consider myself sympathetic to the public's needs and most important, that I am strictly a salaried employee and do not own any portion of the business, I feel I can speak with complete truthfulness and correctness on the following:

My first association with Mrs. Sheehan was a telephone call approximately a week before her mother passed away. She identified herself and since Mr. Copeland was not in the building, I related to her the following.

First that we would certainly handle any arrangements concerning her mother's death and we would comply with whatever wishes she, Mrs. Sheehan, desired. When asked for pricing, I remarked to her that it was difficult for us to relate prices until we knew exactly what she desired. However at this time, I did tell her that we had caskets ranging in prices from \$75.00 to \$2,900.00 and that we dealt in functional pricing. I explained as simply as I could what functional pricing was and explained to her how our overhead was broken into professional services, facilities and equipment used and automotive equipment used. She explained to me that she desired a private funeral and I told her that would be fine. The only requirement we had was that someone in the family would identify her mother's body and see that her instructions were carried out. We assumed either she or her brother would do this as did her brother, the morning of the service.

My first meeting with Mrs. Sheehan was in our business office and after explaining again to her our pricing system and getting more firmly, exactly what she desired as to a private service (although a funeral mass held in the local catholic church was her desire), told her that it would be held at the family's convenience. The local catholic church announced her death and asked for prayers for her soul which is a standard procedure in this church. I mentioned to her that we had looked up her father's record and had gotten the cemetery information needed and also that since her father was an honorably discharged veteran, her mother's estate could claim the Allegheny county's widows veteran allowance of \$ 75.00 which we would (at no charge





R.D. COPELAND

funeral director

Page 2

1417 Fifth Avenue
phone 412-264-1590
Corasopolis, Pa. 15108

to her) file the necessary forms and either make her claimant or our funeral home claimant and give her the credit. I told her what was needed, certified copies of her mother's and father's death certificates and her father's discharge. She later brought in the needed papers and we filed this form for her convenience, again at no cost to her or against her mother's estate.

Mrs. Sheehan seemed very satisfied and left our office. The next setting I had with Mrs. Sheehan was November 3rd. I took her down to our arrangement office and again went over our pricing. When I took her into the casket display room, I explained each of the 24 units we had in the room. Each was clearly marked with both a description card and a price card. Unable to make up her mind, I proceeded to take her to our stock room where there were approximately another 15 caskets. Since it was the stock room, each casket was covered and there were four double racks. The first double rack had on the bottom shelf, a flaring square cloth-covered casket priced at \$ 215.00. It was not on the cement floor but on a metal rack. She would have to realize this, because when I showed her this particular casket I had to pull it out from under the one on the top rack in order to open the lid. Since the rack had casters on it, it was an easy procedure and she seemed to like this casket best. However, she would not make up her mind until she talked to her brother. This is the reason for the two prices on the contract, one for \$215.00 for the cloth and one for \$425.00 for a 20 gauge steel casket she also thought was adequate and which she saw in our display room. As far as clothing for her mother was concerned, she told me to pick out something from our selection. The only thing she said was something pink and frilly. She had no other desire to look at our selection of gowns and so I did select a \$45.00 negligee which also included under-clothing which we supplied: nylons, panties, slip and vest. We stock these sets of underwear for those families who desire to purchase them along with the gowns. Thus our gowns and dresses are priced with two prices, the first for the gown and the second with the \$7.00 set of underwear. So in fact, Mrs. Jack's gown was \$ 38.00 and underwear \$ 7.00. I might add our gowns range in price from \$24.00 to \$68.00 and so I feel the \$38.00 gown was fairly middle priced and suitable.

After selecting the two caskets, Mrs. Sheehan was then shown by me the vaults display in our arrangement office. I first told her that it was not a state law to use a vault however nearly all cemeteries required some cave proof receptacle in which to place the casket, purely for the purpose of keeping the graves from settling. I explained our concrete caveproof container priced at \$ 170.00 and our regular concrete vault with its asphalt seal at \$ 225.00 and the difference between the two and I also explained the model of the tri-plex concrete vault and its price, as were the other fore-mentioned containers, were clearly marked. Our prices included

NASH
NATIONAL
SELECTED
MORTICIANS



R.D. COPELAND

Mortuary Service

Page 1

847 Fifth Avenue
 Phone 412-264 1390
 Coraopolis, Pa. 15108

delivery and installation in the grave and constituted the entire charge for vault service. She accepted this and choose the regular vault at \$ 255.00.

The papers Mrs. Sheehan signed was our contract form which is the breakdown of what the charges are and what is included. She was given our memorandum of agreement with the price breakdown and was told she would receive the copy of the contract she had just signed when she and her brother decided which casket they wished to use.

As far as her remarks concerning cosmetic needs, each and every remains we prepare are bathed, the hair is shampooed and the facial skin and hands are cosmetized to give a natural appearance. We ask for at least one member of the family to view only for identification and for our protection so as to be sure the family knows their wishes are carried out.

I personally set Mrs. Jack's hair and combed it out in a natural soft waved style with out any charge to Mrs. Sheehan only because I wished Mrs. Jack to look natural even though only her son would view her.

As my own personal observation, I must say Mrs. Jack's remains looked very natural and perhaps Mrs. Sheehan's grief would have been eased somewhat having viewed her however, each person to their own beliefs. We have a saying at our home among Mr. Copeland, myself and our staff that we never must forget that a remains is someone's mother or father or brother or sister and to treat the remains with respect. We will not dispose of a remains in uncleanness or nakedness and I can readily say that I am proud to be associated with the R.D. Copeland Funeral Home these passed 16 years.

I am certain that if Mr. Jack was with Mrs. Sheehan at the time of arrangements, she would not have been so confused. I would estimate that between Mr. Copeland and I, we spent over twice the time with Mrs. Sheehan as to our average family consultation and yet we had hoped this would have been adequate. It seems however additional time may have been required.

To reply to Mrs. Sheehan's quote "Your sorrow is measured by the amount of your expenditure", I say this is certainly not the case. Our firm offers service in the same degree to all families no matter what price casket is selected. In fact, often, when limitations of funds are evident, many services are provided without charge. Even though there was no limitation in this case, the hairdressing charge for instance was not charged. The use of a visitation room in our establishment for Mr. Jack and his family to congregate before leaving for the mass at church was not charged as well as the use of both offices used in making arrangements, use of our parking facilities and the equipment used such as our church truck used at the church to hold the casket, the bier at the funeral home to hold the casket and the artificial fern deck surrounding the casket. All these and many more items were not charged. As far as being told the general public would see what



NATIONAL
 SELECTED
 MORTICIANS



R.D. COPELAND

Funeral Home

247 Fifth Avenue
 phone 412 264 1590
 Coraopolis, Pa. 15108

Page 4

type of casket was used, the casket is entirely covered by a pall and it is impossible to tell if a metal or wood casket is used or if it cost either \$215.00 or \$2000.00.

In reference to the \$215.00 casket being shown in the stock room, there was a less expensive unit in our display room at that time priced at \$75.00. We feel 23 units ample for a family to select from but when a family does not choose from these units, we must use the stock room. We feel this is still preferred over selling from a photograph.

As to the recommendation of encouragement and support being given alternative methods of burial, if Mrs. Sheehan desired a disposal type service we would have provided that. It seems her most anxious moments in making the arrangements concerned what her brother would think.

To sum up this whole incident, perhaps Mrs. Sheehan was not mentally prepared to accept this responsibility.

After seeing her weeks later on the street and stopping to say hello and being thanked for being so helpful to her in her grief, I was totally astonished to have this sudden change of heart. I still feel I competently eased her burden of sorrow in an honest and professional attitude and can only hope she can someday realize we, our firm, gave her and her family a very professional service. Perhaps the hearings will result in the public's better awareness of the funeral industry. Perhaps a more positive attitude will be taken by all concerned.

I hope this letter makes the preceding incidents more clear to you and will benefit us as to establish our firm as every professional and yet personable one. Thank you.

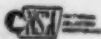
Sincerely yours,

W. F. Kaiser
 W. F. Kaiser





This is an explanation of charges, as well as a purchase agreement in accordance with the regulation of the Pennsylvania State Board of Funeral Directors and the N.S.A. Code of Good Funeral Practice.



FUNERAL SERVICES FOR: Anna Jack DATE OF DEATH: JANUARY 1971

(A) PROFESSIONAL SERVICES: Funeral counseling, availability 24 hrs. per day, arrangements for funeral & interment, preparation & local removal, obituary information to newspapers, filling necessary forms, handling flowers & direction of the funeral service: \$ 366.00

FACILITIES, EQUIPMENT & MERCHANDISE: Use of visitation room, chapel, lounge, office, preparation room, sitting area, necessary funeral equipment including religious necessities, register book, memorial & acknowledgment cards [75]. (any or all of the above items constitute the total of the above charges): \$ 30.00

AUTOMOTIVE EQUIPMENT (locally): Service car for removal, funeral coach, hearse, casket: \$ 98.00, 701.00

CASKET: 215.00 - Flamingo square with Oak Grin 215.00
TOTAL (A) 215.00

(B) ADDITIONAL ITEMS OF SERVICE OR MERCHANDISE:

Outside receptacle: 4.00 225.00
Clothing: 45.00
Newspaper notices: 25.00
Temporary grave marker: 25.00
TOTAL (B) 275.00

(C) CASH ADVANCED FOR THE CONVENIENCE OF THE FAMILY:

Cemetery charges: 125.00
Death certificates: 10.00
Hair styling: 25.00
Honorarium: 40.00
Tomb services: 40.00
Transportation charges: 40.00
Air Pack: 40.00
Long distance phone calls: 40.00
Additional funeral directors charges: 40.00
TOTAL (C) 400.00

TOTAL CHARGES, CASKET & SERVICES, ADDITIONAL ITEMS OF SERVICE OR MERCHANDISE & CASH ADVANCED: 1347.00

CREDITS: 125.00
TOTAL AMOUNT DUE 30 DAYS FROM ABOVE DATE: 1222.00

The undersigned states that I/We have the authority to arrange for the preparation & funeral service for the above & hereby authorize R.D. Copeland to furnish these services including the merchandise selected & other items listed above. The foregoing memorandum has been read by (to) me & I/We hereby acknowledge receipt of a copy of same & agree to pay the funeral account & such additional services & merchandise as ordered by me/us within 30 days in the following manner: personal

The liability hereby assumed is in addition to the liability imposed by law upon the estate and others, & shall not constitute a release thereof. 1% per month (12% per year) will apply to past due accounts.

Copeland
FUNERAL SERVICE

2017 1/1/71
CORPORATED IN OHIO

By: R.D. Copeland
Date signed: February 3 1971

Alma J. Jack I.S.
916 Independence St SE I.S.
Washington DC 20003 I.S.
I.S.

The foregoing comprise the predictable services, facilities, equipment usually desired in this community. We will make reasonable adjustments of other quotations, in case of desired variations from this standard service.

MEMORANDUM OF ARRANGEMENTS

FOR _____

DATE OF DEATH _____

A. PROFESSIONAL SERVICES:

Professional supervision including consultation with family and clergy, supervision of arrangements for the funeral service and direction of the funeral, assistance to family following the funeral and burial services.

Local removal, preservation, restoration and specialized care as necessary of the deceased.

Procurement and recording vital statistics, filing death certificate, securing required permits and forms.

FACILITIES:

Funeral home facilities - use of chapel, visitation room, lounge, parking area, care and arrangement of floral tributes, religious necessities, visitor's registration, acknowledgment cards (limited to 75).

AUTOMOTIVE EQUIPMENT (local):

Funeral Coach, Family Car, Lead Car, Removal Car.

CASKET AS SELECTED:

\$ _____

\$ _____

\$ _____

\$ _____

Total A \$ _____

B. ADDITIONAL ITEMS:

Interment Receptacle

Clothing

Temporary Grave Marker

\$ _____

\$ _____

\$ _____

\$ _____

Total B \$ _____

C. CASH ADVANCED ITEMS - for your convenience we advance monies for the following:

Cemetery

Certified Copies of Death _____

Hair Styling

Honorarium

Tent Service

Transportation Charges

Air Pack

Long Distance Phone Calls

Additional Funeral Director's Charges

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

Total C \$ _____

D. ADDITIONAL ITEMS ORDERED LATER:

Newspapers

\$ _____

\$ _____

\$ _____

Total D \$ _____

Total Amount - A,B,C,D \$ _____

CREDITS:

\$ _____

\$ _____

\$ _____

Total Credits \$ _____

Total Amount Due 30 Days From Date \$ _____

THIS IS A MEMORANDUM OF ARRANGEMENTS AND IS COMPLETE WITH THE EXCEPTION OF THE ITEMS THAT ARE CHECKED; THEY WILL BE ADDED TO YOUR PURCHASE AGREEMENT AND A COPY GIVEN TO YOU.

EXPLANATION OF CHARGES

The following constitutes our STANDARD SERVICE, FUNERAL HOME, FACILITIES, AND AUTOMOBILES. These meet the needs of the majority of families we have served. ANY FAMILY MAY ADD OR DELITE FROM THIS LIST AS THEY DESIRE.

PROFESSIONAL SERVICES\$ 366.00

Counseling the family, supervision of all arrangements, direction of the funeral service, arranging with the clergy, general assistance during & following the funeral service. \$ 246.00
 Technical services (preparation, dressing, removal and sanitizing care) \$ 100.00
 Procurement & recording vital statistics, filing the death certificate & securing necessary permits: \$ 20.00

FACILITIES\$ 280.00

Funeral home preparation room \$ 30.00
 Visitors register \$ 10.00
 Memorial or Prayer cards \$ 10.00
 Acknowledgement cards \$ 10.00
 Visitation and funeral service \$220.00
 [One night viewing and funeral services] \$150.00

AUTOMOTIVE EQUIPMENT\$ 114.00

Service car (local removal) \$ 29.00
 Funeral coach (local) \$ 45.00
 Family car (local) \$ 40.00
 Lead car (local) \$ 10.00

We have one of these memorandum's next to each telephone each man is instructed to read from it to answer questions concerning our costs.

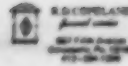
We give each of the selecting family a copy so they can follow us as we read it to them and they are aware of our charges before they go to select there casket.



BY APPOINTMENT ONLY
 1000 N. 10TH ST. - PHOENIX 10-1000

BY APPOINTMENT ONLY
 1000 N. 10TH ST. - PHOENIX 10-1000

Q1W



CONSUMERS TO AWARENESS

THE PRICE OF THIS CASKET IS

\$ _____



NSF CODE OF GOOD FUNERAL PRACTICE

As funeral directors, our calling imposes upon us special responsibilities to those we serve and to the public at large. Chief among them is the obligation to inform the public so that everyone can make knowledgeable decisions about funerals and funeral directors in accordance with the standards of our profession, and as a condition of our membership in National Funeral Directors Association, we affirm the following standards of good funeral practice and hereby pledge:

1. To provide the public with information about funerals, including prices, and about the funeral services and responsibilities of funeral directors.
2. To afford a continuing opportunity to all persons to discuss or arrange funerals in private.
3. To make funerals available in as wide a range of price categories as necessary to meet the needs of all segments of the community and affirmatively to extend to everyone the right of inspecting and freely considering all of them.
4. To quote comprehensively in writing the charges for every funeral offered; to identify clearly the services, facilities, equipment and merchandise included in such quotations; and to follow a policy of reasonable adjustment when less than the quoted offering is utilized.
5. To furnish to each family at the time funeral arrangements are made, a written memorandum of charges and to make no additional charges without the approval of the purchaser.
6. To make no representation, written or oral, which may be false or misleading, and to apply a standard of total honesty in a dealing.
7. To respect all faiths, creeds and customs, and to give full effect to the role of the clergy.
8. To maintain a qualified and competent staff, complete facilities and suitable equipment required for comprehensive funeral services.
9. To assure that we serve the right of personal choice and decision in making funeral arrangements.
10. To be responsive to the needs of the poor, serving them within their means.

We pledge to conduct ourselves in every way and at all times in such a manner as to deserve the public trust, and to place a copy of this Code of Good Funeral Practice in the possession of a representative of all parties with whom we arrange funerals.



1/10

Ms. WHITNEY. I understand, also, that you complained to the Pennsylvania State Licensing Board about your experience with the Copeland Funeral Home. Is that correct?

Mrs. SHEEHAN. That is correct.

Ms. WHITNEY. What did the board conclude with respect to the practices of the Copeland Funeral Home?

Mrs. SHEEHAN. Actually the only communication I received from the board was that they reiterated the fact that we had decided that I had accepted a deduction from the bill because Mr. Copeland had not handled the flowers.

Ms. WHITNEY. You appeared before that board; is that right?

Mrs. SHEEHAN. Yes.

Ms. WHITNEY. What was your testimony to that board with respect to your opinion as to what Copeland Funeral Home had done wrong?

Mrs. SHEEHAN. I simply answered their questions.

Ms. WHITNEY. Was there anything specific that you mentioned to them that you felt the Copeland Funeral Home had done wrong?

Mrs. SHEEHAN. Many things. We went through practically all of my testimony before the FTC. In addition, I brought to their attention very specifically the fact that Mr. Copeland had refused to handle flowers when his bill most definitely showed that I was to receive that service.

Ms. WHITNEY. When you were asked by the board what kind of compensation you would accept from the Copeland Funeral Home for your complaints, what was your response?

Mrs. SHEEHAN. My response was that I was not so much concerned at this point with the money but I was concerned that I wanted to make this issue public, and to show that this was my interest I would accept a deduction in the amount of whatever it would have cost Mr. Copeland to handle these flowers.

Ms. WHITNEY. What was the amount you accepted from the board?

Mrs. SHEEHAN. Mr. Copeland said it would have cost him \$25 to handle these flowers. I said I will accept the deduction of \$25.

Ms. WHITNEY. So that was your settlement with the board regarding your complaint with the Copeland Funeral Home?

Mrs. SHEEHAN. Yes; I did not attempt to acquire a large settlement from him for embarrassment, humiliation, et cetera.

Ms. WHITNEY. Were you satisfied with the finding of the Pennsylvania State Licensing Board for Funeral Directors?

Mrs. SHEEHAN. Well, I wish they would have written me and told me whether or not they had communicated with Mr. Copeland, whether or not they had censured him, whether or not they had any opinions on his practices. I would have been pleased to have some information on that aspect, but I never heard anything.

Mr. GORE. If counsel will yield at this point. I wonder whether counsel has information for the record as to the makeup of the Pennsylvania Board of Funeral Directors. We are putting a lot of weight on their determination. I wonder how many are funeral directors.

Does counsel have that information?

Ms. WHITNEY. I believe there are five members on the board and they are all funeral directors.

Mr. GORE. I see.

Ms. WHITNEY. At the time of Mrs. Sheehan's complaint they were all funeral directors. The law has been changed to provide for two consumer representatives on that board.

Mr. GORE. I thought that might be a useful addition to the record.

Thank you for yielding.

Ms. WHITNEY. Following your taking the complaint to the Pennsylvania State Licensing Board for Funeral Directors, did you then take the matter up with the Pennsylvania Bureau for Consumer Protection?

Mrs. SHEEHAN. No; I had written to the Pennsylvania Consumer Protection Bureau in Pittsburgh at the same time I wrote to the Pennsylvania Board. They referred the complaint also to the Pennsylvania Board.

Ms. WHITNEY. Have you gotten satisfaction of your complaint from the attorney general's office where the consumer protection board is located?

Mrs. SHEEHAN. As I explained to you, if you can call a rebate of \$25 satisfaction, I suppose I did. In terms of feeling that they had in any way looked into Mr. Copeland's practices or made any determination of his practices, no.

Ms. WHITNEY. I am not referring to the licensing board of funeral directors, but I refer to the State Consumer Protection Board, which is a different body.

Mrs. SHEEHAN. Well, they told me they would refer this to the Pennsylvania Funeral Board.

Ms. WHITNEY. That is all, Mr. Chairman.

Mr. GORE. Mr. Mottl?

Mr. MOTT. Thank you, Mr. Chairman.

Do you feel you were taken unfair advantage of in your state of mourning?

Mrs. SHEEHAN. I think so.

Mr. MOTT. Could you elaborate on that, as to how?

Mrs. SHEEHAN. Well, in the first place I think it is certainly taking advantage of people when you refuse to give them any information so that they can handle a burial easily. In other words, I think it is taking advantage of people when you have to struggle for every scrap of information that allows you to think through this process, to try to think through how a burial will suit your emotional needs. I think it is taking advantage of a person when you tell them to consider what the neighbors think when it comes time for casket selection. That is enough of a strain, having to look at 10, 20, or 30 caskets.

When you are burying someone and you are in a state of stress and extreme vulnerability, this is almost unbearable.

Mr. MOTT. Can you relate similar experiences of friends or family with this particular undertaker or others in the neighborhood?

Mrs. SHEEHAN. No; I cannot because I have been away. I have lived away from this town now for almost 30 years. Therefore, I am not in a position to say how funerals have been handled by friends and I have no other family in the area.

I think there are some other ways in which I was taken advantage of, Mr. Mottl. I did not wish to have the death announcement made in the Pittsburgh papers. I wanted it to be only in the two newspapers. However, the undertaker's assistant kept pressuring me and pressuring me to have this also announced in the city papers. I couldn't understand the reason for it, but I feel this was an additional pressure that was placed upon me.

At one point, when it came to caskets, at the time of the casket selection, another thing that happened was that I wanted to purchase this \$215 casket. I chose that one.

When we sat down actually to fill out the blanks I had a momentary lapse. Since I was making all of these funeral arrangements, really not consulting anyone except upon occasion my brother, during a momentary lapse I said, "Well, maybe I ought to consult my brother about this." I thought perhaps there was some reason I didn't know and I should perhaps select the metal casket.

Immediately I knew that I had made a mistake because the undertaker's assistant said, "Yes, I will put down this casket." It was priced \$400. "You consult your brother about that. You really think about that."

I recognized immediately I was being pressured to get this more expensive casket. I knew that one way or another I was going to end up with that \$400 casket. I then said to him flatly at this point and very determinedly, "No, I will take the \$215 casket. That is my decision and it is irrevocable."

There were times, even though I was very distressed, I had to be very firm, to the point of being extreme, in trying to get what I wanted. I don't feel I should have to cope with that kind of pressure. I should not have had to cope with that kind of pressure.

Mr. MOTTl. It is my understanding that your father passed away first and then your mother; is that correct?

Mrs. SHEEHAN. My father passed away in 1953.

Mr. MOTTl. Copeland also handled that?

Mrs. SHEEHAN. Yes.

Mr. MOTTl. Did you have any other similar experiences with your father as with your mother's funeral?

Mrs. SHEEHAN. My mother made those arrangements, I did not. I was very young at the time. I would hardly have known what was going on.

Mr. MOTTl. So you don't recall your mother might have mentioned any misrepresentation in that instance?

Mrs. SHEEHAN. Well, my mother was an immigrant lady who did not understand English very well. I doubt very much whether she would have recognized too much of what was going on.

Mr. MOTTl. So you think a lot of the American people place full faith and trust in their funeral directors expecting that the family will be treated with respect and some dignity and also that they will be fair about prices?

Mrs. SHEEHAN. Well, I think when you are burying someone you are so emotionally distressed that you look to the undertaker as a friend. I could not conceive that in my stress, in my sorrow, that anyone would take advantage of me when I had to face the burial of someone. It was inconceivable to me.

Mr. MOTT. I imagine the surviving spouse and children are never in a more vulnerable position than when they are dealing with someone's death; is that right?

Mrs. SHEEHAN. Would you repeat that question? I don't understand it.

Mr. MOTT. The surviving spouse, or the children, in trying to make burial plans, are never in a more vulnerable position than when they are dealing with an undertaker due to their own mourning, sorrow, and bereavement which has taken over the family at that time.

Mrs. SHEEHAN. It is an extremely difficult and a most emotional situation to be in. It is a very difficult situation to handle. You need to deal with someone who is going to be very straightforward with you.

Mr. MOTT. Thank you, Mrs. Sheehan.

Thank you, Mr. Chairman.

Mr. ECKHARDT. Thank you, Mrs. Sheehan.

Our next witness will be Dr. James Reveley.

Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Dr. REVELEY. I do.

TESTIMONY OF DR. JAMES REVELEY, SAN ANTONIO, TEX.

Dr. REVELEY. I would like to give you some background information on myself so that you know something about what I am going to say.

I am 36 years old. I went into the funeral business in 1961, so I have had almost 19 years of practical experience in the business.

I graduated from the National Foundation of Funeral Service Schools of Management in Evanston, Ill. After I was in the business for a number of years I became very, very disenchanted. I was working at places considered to be the pillar of the community, the most upright funeral homes around. The more I worked at them the more I realized that some of the statements in the "American Way of Death" were true. I felt the majority of funeral homes—not all, but the majority of funeral homes—either practiced or condoned some of the abuses outlined by the FTC.

I went back to school, got my bachelor's degree, and got my dental degree. I am now practicing dentistry in San Antonio.

At the same time I started a funeral service that is a memorial service. We handle simple funerals, that is it. Plain pine boxes, no viewing, no cosmetics, no embalming, simple cremation or simple burial. I have been under continuous harassment from some of the local funeral directors ever since the inception of that business.

I want to go into some of the things I was taught that persuaded me I needed to get out of the funeral business, that I just couldn't do that for a living any longer.

There is a subtle hard-sell movement. Mrs. Sheehan talked about the disarrangement of the casket selection. I can assure you that casket selection was very carefully and very scientifically laid out.

At the national foundation that method is taught at funeral homes. I have seen the funeral director in charge with a board that is laid out much like a monopoly board, with little wooden caskets on it. He can arrange, rearrange, and decide exactly what the

highest average will be, how to arrange the caskets so that as people walk in they are led in one particular direction, usually to the right.

There are little seating arrangements scattered at random around the room but carefully planned in order for people to sit at them and be surrounded with the better end of the line.

The lighting of the caskets is carefully planned. The color on the units is very carefully planned.

She talked about the gray cloth covered casket. That same casket is in all probability available to that funeral director for the same fee with a nicer covering. He knows if he puts that casket on display he will sell a lot of them. He wants to dress it down and make it as ugly as possible. That is a common practice.

I just got very disenchanted with this entire situation and decided to get out of the funeral industry. I was able to maintain my livelihood working nights, weekdays, and holidays as an embalmer so I could go back to school.

I really do want to stress that I think there is a definite need for Federal guidelines in this area. I would like to go into that with you.

There is an overwhelming consumer ignorance in this entire area. People don't know. As Mrs. Sheehan said she didn't know regulations. Many consumers are taken advantage of and don't know they are. Consequently, little complaint is given to the State boards.

Second, I heard the statement made a number of times, "I know what my people want." Funeral directors will make this statement in response to State regulation. They will say, "I don't need you to come in. I know what my public wants." Usually what they press upon the people is the standard big funeral.

Very few funeral homes give people the option to walk in and say to them: "We can have open casket viewing, closed casket no viewing, simple cremation, simple gravesite services, donation to medical science, whatever you wish." That is not a common practice in the funeral industry at all. It is something I think should be done.

This showroom manipulation situation is very common. Those rooms are just not done at random. They are very, very carefully planned.

In Texas we just passed some new laws that state that the least expensive unit must be shown in every casket selection room.

I also would like to add that the bill proposed—this is one reason I think the Federal Government should have something to do with it—the bill initially proposed by the Texas Funeral Directors and Embalmers Association, endorsed by them, simply said one of the three least expensive caskets be shown. That was changed to read "the least expensive casket."

I went to a meeting of the State board of morticians where they were letting everybody know what the new laws were. A man in the crowd got up and said, "Now that I have to show the least expensive unit, do I have to show wood? Can I do away with my low-end units?"

They said, "Sure. We cannot tell you what you can show, but you can start your line wherever you want."

That will be a common attitude of funeral directors. They will try their best to get around things.

Primarily if there are not Federal guidelines set down, many of the State associations will try to subvert these laws, get new laws passed that look as though they are strong in effect, but in fact are very weak. I have several examples of those.

The bill proposed by the TFDA—I had copies presented to you. There is a section in here which says, "The old law used to be five caskets minimum, sufficient merchandise to show people." The bill they suggested upped that to 10. I think basically that was just the opportunity to stop small places like mine going into business and offering people alternatives to the standard funeral. That was changed back to five.

I don't think there should be any number restriction on it. That is on page 9 at the very bottom of my exhibit.

There is another one here, and this is my favorite. Section 10, page 16, almost all the way to the back.

General price list:

Funeral home shall furnish a customer, at the time of discussion of funeral services or merchandise for the selection of services or merchandise by the customer, a printed or typewritten list which the customer may keep of the retail price for the following items: Transfer of deceased to funeral home, embalming, use of facilities for viewing, use of facilities for funeral ceremonies, a hearse, a limousine, and the itemized services of the funeral home staff.

The price list required shall be headed by the name, address, and telephone number of the funeral home and effective date for the prices and the following notice: "You may choose only the items you desire. You will be charged only for the items you use. If you have to pay for any items you do not specifically ask for we will explain the reason in writing on the memorandum agreement. Please note there may be charges for such items as cemetery fees, flowers and newspaper notices."

On the surface that looks good. If you notice, there is no itemization of casket prices in that, none whatsoever. That is the major part of the entire service right there, or a major component of it. Nothing is listed on casket prices.

I pointed this out to the legislators involved. They changed the law and put casket prices into this. It was passed by the house of representatives in the State of Texas.

When it went to the senate, as it was leaving the house—rather, it was passed by the senate. As it was entering the house the TFDA lobbyist stood up, and here is the amendment, and I have a copy of it which I hope all of you gentlemen and lady have.

The TFDA tried to amend that to say "failure by any person arranging for funeral services or merchandise to make available on request to the customer at the time of discussion"—and then into this itemized list.

They initially presented a bill stating the list was to be given voluntarily. We changed it. They backed off and tried to change it to "upon request."

If you don't know you won't ask. You don't know that itemized list is available so you don't ask for it.

In the State of Texas the law now reads it is to be given to the family at the time of selection of funeral services.

I have also given you letters from State Senator Doggett that he already received complaints. After the funeral directors were advised this was to be given upon request, apparently many of the

funeral directors assumed it was to be given upon request. He wrote a letter that it is to be given voluntarily. The intent of the legislation was that it be given voluntarily.

It is obvious from situations like this that if you leave legislation, especially an itemization of prices, and telling people the truth that there is no such thing as a sealer casket or vault that will delay decomposition of the human body, that sort of thing, if it is left up to the States, in all probability in many of the States it will be subverted by the organized industry.

I believe you should establish some Federal guidelines for this sort of situation. It is just a situation that must be regulated on a Federal level. There is no other consumer situation like a funeral transaction. I have been involved in a number of them.

One reason I was never effective in the funeral business was the fact that if somebody came in to me and said, "We want as simple a funeral as possible," I will say, "Sure. Here it is."

I was dressed down by managers of different places I worked at because my sales average was not high enough. The more I was at it the more I realized I could not do that for a living. I think it is very important that at least Federal guidelines be established in this area. I cannot think of any transaction that is as peculiar in itself as a funeral transaction.

There is a particular advertising ploy used in the industry where funeral directors suggest to people—you see it in many papers—"We never would suggest you spend more than you can afford."

That is ridiculous. That is like telling somebody that because they have a certain amount of money they should drive a Mercedes or Cadillac rather than a Volkswagen. That is a subtle thing. "We would not suggest you spend more than you can afford but you should spend what you can afford." That is common in the industry.

I know many fine men in the funeral business who try to take care of the families they work with, but I do think that the substantial majority of funeral directors need some sort of regulation, very much so.

Thank you.

Mr. ECKHARDT. Mr. Gore?

Mr. GORE. Thank you very much, Mr. Chairman.

We heard first from Mrs. Sheehan. We now see a broader perspective. More than 1.9 million people are in the situation Mrs. Sheehan was in. The country as a whole spends \$5.4 billion on funerals each year. It is the third largest purchase consumers make during their lifetime. The average is \$2,400, much higher than the price Mrs. Sheehan ended up paying.

What you are telling us is that the industry generally follows practices that are designed to jack up that price without substantially improving the service or product that the consumer is given. Is that the gist of your testimony?

Dr. REVELLY. That is right. I feel that the industry generally does not let people know their options, and unless you come in and you are very, very strong and adamant about your feelings to the funeral director, you are going to wind up with "standard funeral," unless you come in and let them know, "We want cremation or we

want this or that," they will not let you know with regard to those options available.

There are funeral directors who will. More power to them. I am glad to know about it.

However, I believe, generally speaking, the industry is geared toward selling big funerals.

I have an advertisement I brought in and had copies made for you which we run in the papers in San Antonio advising people there are things available other than big funerals. I believe you will probably find that is the only sort of advertising going on today.

Mr. GORE. The standard response in this country to problems within an industry is to let the free market system resolve those problems: "Let the buyer beware." Yet there are specific areas where our legal system has recognized that a transaction is not a fair one, that the normal bargaining process does not take place.

Dr. REVELEY. Yes.

Mr. GORE. A contract signed by a minor, for example, is not recognized by the law because the law assumes that the minor does not have the ability to contract.

If somebody contracts while he is mentally incompetent, or if people are half drunk, the law will throw out that contract for that reason.

Here the Federal Trade Commission was proceeding on a completely different legal theory, but it seems to me there are similarities when a family is bereaved, emotionally upset. They don't want to spend a lot of time comparison shopping or haggling over prices. At the minimum they should be given price information if they ask for it—if they say "Look, what am I buying? How much will it cost? What are my choices?" You would agree?

Dr. REVELEY. Yes.

Mr. GORE. There should be some requirement that if a bereaved family asks for price information that they ought to be given price information?

Dr. REVELEY. No; I disagree. I think they should be given that information voluntarily.

Mr. GORE. Even without asking for it.

Dr. REVELEY. That is right.

Mr. GORE. The Federal Commission rule was mild in that respect. It said the price information had to be given only if it was first asked for.

Dr. REVELEY. Yes.

Mr. GORE. That is what Congress defeated recently.

Dr. REVELEY. I think it should just be given voluntarily.

In the State of Texas our law now says it is to be given voluntarily. That was the intent of the legislature, that when a family sits down they be given an itemized price list by the funeral director and be told, "Here are your options. This is what is available to you."

They still are not being given options other than the standard funeral that I know of. The opportunity for immediate cremation or immediate burial is not given. It should be given voluntarily and not upon request.

Mr. GORE. Tell me some more about this Funeral Service School of Management. How long did you attend this?

Dr. REVELEY. It is a 1-month course.

Mr. GORE. A 1-month course.

Dr. REVELEY. Yes, sir. It was in 1967 when I went there.

Mr. GORE. Were there different courses or blocks of instruction?

Dr. REVELEY. Different blocks of instruction—casket arrangement, display room, painting, walls, lights, different types of lights to use, classes in pricing, how to break caskets up into different quadrants, and the fact that in a median area you want as much available as possible so they have three or four choices, \$1,200 to \$1,800 price range, but at the lower end you want only one of every unit and try to make it look as nasty as possible. There are things of that nature. It is a subtle hard sell.

Mr. GORE. In other words, a scientific approach to exploiting the condition of bereavement and seeking to make the bereaved customer choose the maximum price.

Dr. REVELEY. Right. I have heard a number of funeral directors say:

We would never do anything like that at our place of business. As a matter of fact, we show the customer to the selection room, speak to them a few minutes, and turn them loose in the casket selection room and let them make their own selection.

That sounds good on the surface. It was pointed out to me in mortuary school that if you do that, on the average your sales will be about \$100 above than if you were in there with them for the simple fact when they are in there by themselves, chances are they will make a selection. If you are not there for them to ask they will not ask whether you have anything else available, whether you have other units not displayed or shown, or if you have other colors and things of that nature.

It sounds very ethical to say, "We let people make their own choice," but it is another selling point.

Mr. GORE. You heard Mrs. Sheehan testify that the statement was made to her "Consider what your neighbors will think as you select the casket." Did that ring a bell with you? Is that something you were taught or is that an unusual statement?

Dr. REVELEY. I don't believe it is necessarily unusual but it is not something I was ever taught. It is not something I would ever say to anybody or would have said to anybody under those circumstances. However, I think it probably happens on more than isolated situations.

I have done enough research myself into the funeral industry in the last few years to have found a number of instances of things like that being said, not only in FTC hearings but Consumer Reports and several books available where I have done extensive reading. I believe that is not an isolated occurrence.

Mr. GORE. How much do you now charge for a funeral?

Dr. REVELEY. Simple cremation is \$335. Simple burial \$365. That includes our complete service plus casket.

On simple cremation we pick up the remains, hold them under refrigeration, secure all the legalities, take the remains to the crematory, and then deliver the remains to the family or keep them ourselves and scatter them at sea or over the hill country in Texas.

If someone wants a simple burial, our same standard service—pick up, hold, refrigerate, take care of legalities, wrap the remains in a clean, white sheet, put in a plain pine box, and deliver to the cemetery for a gravesite service, at which time we cover the pine box with a white cloth. If they use metal caskets routinely in their family, we have a metal casket available that is not a sealer. Basically there is no such thing, but in a metal casket our service is \$552, I believe, including the casket. That is the total.

Mr. GORE. One-seventh of the nationwide average.

Dr. REVELEY. Yes, sir. I am not quite sure about your figures on the national average. That \$2,400—do you know whether that includes cemetery and burial?

Mr. GORE. \$1,400 is the average for the funeral alone.

Dr. REVELEY. All right.

Mr. GORE. Thank you, Mr. Chairman.

Mr. ECKHARDT. Mr. Mottl?

Mr. MOTT. Can you give me and the subcommittee some information on your background? You are presently an undertaker?

Dr. REVELEY. Yes. I practice dentistry full time. I have a funeral director's and embalmer's license and I oversee operation of embalmers' services.

Mr. MOTT. You do own a funeral home?

Dr. REVELEY. Yes.

Mr. MOTT. How long has that been?

Dr. REVELEY. Two years. I would like to add I would welcome Federal regulation on the funeral industry. As a funeral director I make that statement.

Mr. MOTT. The doctor is a doctorate's degree?

Dr. REVELEY. I am a dentist. I have a full-time dental practice.

Mr. MOTT. Were you practicing dentistry before?

Dr. REVELEY. I have been a practicing dentistry since 1976.

Mr. MOTT. You indicated, and I think it is common belief, that the most costly item is the casket in the funeral. Is that correct?

Dr. REVELEY. Probably the most single expensive item. All the other items combined in many instances will cost more than the casket itself, but that is a compilation of items.

Mr. MOTT. Could you recite for the subcommittee some instances you have seen, observed personally, or heard about, with regard to the dressing down of the low-priced casket? Is that a common practice in the industry?

Dr. REVELEY. Yes. The lower priced casket generally is covered in a flat, gray charcoal covering. It is standard in the industry.

You can get the same casket from the jobber covered in a real nice, perhaps a floral print or different color, something, anything, but something certainly more acceptable to the eye than that gun metal gray casket, and it is available readily. When you run out of gun metal you can call up the jobber, ask him to deliver it, and he will do it. It is commonly not done that way. They keep the low end units looking as unattractive as possible. As far as I am concerned that is a very common practice in the industry.

After having worked in a number of places I can recall only one that kept a reasonably attractive looking lower end unit. That one was hidden. I believe it is now on display. A lot of funeral directors

in the State, most by law now, have gone to showing their lower end.

Mr. MOTT. What is the motivation for most people in purchasing a more costly casket? Is it the decomposition of the body, prevention of same, or is it esthetic?

Dr. REVELEY. I think it is a combination of things—social pressure to think what the neighbors would think, prevention of decomposition in some instances, esthetics. It is a combination of things, I believe.

Mr. MOTT. In your previous statement, you said that to the best of your knowledge there isn't a casket presently being used that prevents decomposition.

Dr. REVELEY. That is right. Embalming will not substantially prevent decomposition. In fact the new Texas law reads that a funeral director cannot make any statements to a family about the fact that embalming will substantially prevent decomposition of a body. You are programmed to decompose when you die. Nothing is more natural.

Mr. MOTT. So a sealed casket will not do anything?

Dr. REVELEY. It may slow it down some but not prevent it from happening.

While we are on the embalming, I would like to digress and say I don't think embalming is a public health factor at all. I have copies of letters from the Texas Department of Health to that effect and from the Center for Disease Control and Research in Atlanta, Ga., to that effect, that embalming does not prevent any significant public health factor.

One of the first jobs in the morning at any funeral homes I have worked at is for the first man on duty to do a body check. Be sure that the bodies laid out have not begun to decompose overnight, swell in gas form, seepage from the nose and ear, and things of that nature. If that occurs they will run the people to the preparation room and just do a little repair and run them back out on display again.

As far as I am concerned that is a public health hazard right there.

I worked for one major funeral home who was expecting a visit from the State board of morticians, which turned out to be a cursory cup of coffee, anyway, but the morgue was in such hideous shape that they took us in, and we were scrubbing and cleaning, elbows everywhere, and finally the manager realized it was in such horrible condition that nothing could be done.

He sent out and bought a couple cases of white spray paint and proceeded to spray that entire morgue white over all this grime that had collected on the walls, blood, gut, gore, for years and years. That kind of thing should be regulated by the department of health.

At this point in time the departments of health in none of the States I know of have anybody who goes into these morgues and checks out those situations.

Mr. MOTT. So you would advocate not embalming?

Dr. REVELEY. I think refrigeration is probably the most sanitary approach available. If somebody absolutely must view the body for whatever sociological reasons and they want the remains laid out

in state, it should be explained there is a possible public health hazard as opposed to a benefit to public health.

Mr. MOTT. What would you say is the percentage of so-called ripoffs to the consumer in this area? Have you any rough idea for the subcommittee?

Dr. REVELEY. No. It would be impossible to estimate that.

I think in all probability it happens more than it does not. It is difficult to put a figure on that situation.

There are so many little subtle things that can be done—just overcharge on honorariums, for example, overcharge on obituary notices, or death certificates.

FTC states on the average \$20 a funeral is secured by the funeral director on overcharges. When you have 2 million funerals a year that is \$40 million that the public is being taken for. I think that more than offsets the cost of the hearings and all that has taken place. However, that kind of thing goes on more often than not.

Mr. MOTT. First we have the casket as the primary item where a funeral director or undertaker can overcharge. What is the second category where a consumer could be ripped off?

Dr. REVELEY. In the past under unit pricing there have been a number of things. Mrs. Sheehan said she was charged for arrangement of flowers. It never occurred, but she was still charged. Under unit pricing the family may say, "We will not have a limousine or pallbearers; deduct this fee."

The standard reply in the past has been:

That is a standard part of our service. There will be no deduction whether or not you use it. You might as well use it.

A man has to pay overhead on limousines parked out there. If people do not want that sort of service it is still up to him to pay that overhead. In many cases under unit pricing that is how it is.

Under itemization, in all probability itemization will, to those people who want the entire funeral service, drive the price up somewhat because they will no longer be supported by people who do not want that. That is kind of the American way—if you want something you should pay for it. If you don't want it you should not have to pay for it.

Mr. MOTT. The last group of questions concerns Texas law. Was there widespread abuse in Texas which led to the drafting of this progressive law now implemented in Texas? Is there any other State to your knowledge which has such a comprehensive and progressive piece of legislation?

Dr. REVELEY. From the studies done by the legislature and from complaints received once this was under effect, there apparently were widespread abuses.

I have a statement here by the senators involved regarding the State board of morticians. I am not sure whether you gentlemen have it. It said the State board was an excellent example of the fox guarding the henhouse. I am afraid I would have to concur with that.

Before the law changed, there were six funeral directors on it and no lay people. Now we have five funeral directors and four lay people.

Not surprisingly, only 40 percent of the complaints received by the board from 1975 to 1977 were from consumers and 88 percent

of the complaints that the board acted upon were those lodged by the licencees. They were just blowing off the public as far as I am concerned and looking into just their little family squabbles.

It said the sunset staff found the efficiency of the agencies' operation was substandard and enforcement was ineffective.

The sunset commission voted to totally abolish that board and give the embalming regulations to the State department of health. It just wound up in a big compromise between the lobby and the legislature.

In reply to the second part of that question, I think that Florida has a relatively good law. I believe the State of Arizona is trying to get laws into effect, or have new laws, but is having trouble enforcing those laws. However, I don't believe there are that many people around like myself who are willing to face some of the threats I have received.

I have had death threats over this situation. I don't believe there are enough people around in the funeral industry who can depend on another livelihood like myself who will come forward and see to it that laws are passed—equitable, consumer laws.

Really, I believe if it is left up to the State boards across the State and to the industry across the Nation on a statewide basis, the majority of laws passed will be totally ineffective or will make the funeral industry situation stronger. They will be able to come back and say, "Look what good guys we are. We passed these laws." In effect, the laws will be very ineffective.

Mr. MORRIS. Doctor, you are to be commended for your courage in being here. We certainly appreciate your testimony.

For one, I appreciate your testimony.

Dr. REVELEY. Thank you.

Mr. ECKHARDT. Do you see any reason the regulatory agency should regulate only to the question of funerals? A regulatory agency is involved in two things primarily, one being health and the other being consumer protection.

Do you see any particular reason there should be a single agency dealing with funerals only in a State or in any type of legislation regulating these items?

Dr. REVELEY. No. There should be interplay, particularly the board of health.

The law in Texas now states that a funeral director or representative of a funeral home cannot make implications to people about airtight and watertight caskets, sealing caskets, and so forth.

It was brought to my attention a few days ago that friends of mine were called by a preneed salesman. This man proceeded to tell them if he died first they could bury him at this combination funeral home and cemetery and put him in a vault, a sealer casket, and if he were in the ground 10 years and the widow wanted to move to Florida she could dig him up and he would still be there, take him with her. It is a little macabre to me, anyway, but that was the suggestion.

The husband talked about cremation. This salesman made some disparaging remarks about cremation. He also told him it was against the law in the State of Texas for ashes to be scattered, which is not true.

When I found out about this I called the State Board of Morticians and said, "This is what the preneed man is saying."

They said:

The new legislation covers at-need funerals only. We have no regulations as to what he is telling people. Contact the Texas Bank Commission because they are in charge of preneed.

I contacted them and they said, "I am sorry. We are involved only in the financial situation."

What it amounts to is that this man can go out as freely as he wants to and make blatant statements like that and nobody is regulating it.

My next push in the State of Texas is to see that all that preneed law is taken care of. There needs to be an interplay between agencies. I would like to see the State Department of Health involved in this.

Mr. ECKHARDT. Are there also cases involving persons in different States who must make funeral arrangements for a person dying, say in the State of Texas? Do you run into that?

Dr. REVELEY. Yes, where someone will die in San Antonio or somewhere in the State of Texas and the remains need to be shipped out; yes, sir.

Mr. ECKHARDT. There is an involvement with commerce between the States?

Dr. REVELEY. Yes.

Mr. ECKHARDT. From your experience, and you have had experience in San Antonio, also, dealing with the question of training of morticians, and so forth, I assume you followed in your reading and observation the practices throughout the country, have you not?

Dr. REVELEY. Yes, sir.

Mr. ECKHARDT. Would you say that the problem is a uniform one as a general proposition nationally?

Dr. REVELEY. Yes.

Mr. ECKHARDT. The methods of salesmanship tend to become uniform due to the experience of persons exchanging information between each other, and that sort of thing?

Dr. REVELEY. Yes. In the standard texts used throughout the Nation as well. The principles and practice of embalming, different books available, the fact many funeral directors do send their employees to the National Foundation from across the Nation, it is a relatively routine situation. The answer is yes.

Mr. ECKHARDT. Of course it is certainly true we have experienced considerable power on the part of the funeral industry in connection with action in the U.S. Congress. Can you comment on that exercise of influence through lobbying in the State of Texas?

Dr. REVELEY. From what I saw in the State of Texas I was more effective than the funeral industry. They tried to put a lot of things through that wound up simply not being on the books.

I can give you some examples of personal power attempts in San Antonio to suppress my business. When I opened up I called a man up that I needed to make death calls. A licensed funeral director must make a death call in the State of Texas.

I said, "We will need you to make calls for us." He has a commercial business there. He was foolish enough to tell me he had been contacted by most of the local funeral directors and told

if he did business with me they would no longer do business with him and put him out of business.

I told him I would be delighted to take him to court and make him the scapegoat for funeral directors. He started doing business with me.

Both newspapers contacted me for stories. The reporters involved went back and, to get a nonbiased situation, contacted one of the major funeral directors in San Antonio. He refused to comment. Within 20 minutes the editors of the paper contacted reporters involved and said, "Stop those stories."

That is the kind of pressure I have gotten on a personal basis.

Mr. GORE. How do you know that?

Dr. REVELEY. I talked to the reporters involved.

Mr. GORE. How did they know that? They said the editors contacted them?

Dr. REVELEY. They told me the people in charge, the various editors or department heads, told them to stop this.

One of the reporters gave me the specific name of the funeral director she called to ask. He refused to comment. Within 20 minutes the newspapers told her to stop the story; they would not run it.

The second time the newspaper contacted me. I told him what happened with the other paper. He said, "You don't have to worry about that. Not us."

He did this whole thing, the writeup. It was supposed to appear on Sunday. It didn't.

I called him on Monday but he said, "I don't know how to tell you this but exactly the same thing happened in my paper as with the other one." The advertisers called in and stopped it.

Mr. GORE. If the chairman would yield, I would like to request we hold the record open at this point and I would like to find out more about that.

I used to be in that business. It sounds very unlikely. I have heard of its happening, but I would like to look into it.

Dr. REVELEY. That would be fine.

Mr. ECKHARDT. Without objection, the record will be held open at this point for that purpose.

[The information was not available to the subcommittee at the time of printing.]

Mr. ECKHARDT. You indicated there were activities in the nature of a boycott against your operation?

Dr. REVELEY. The circumstances I was bringing up are what I considered as being a boycott against my operation. One of my men was contacted a couple years ago. He was walking in a major mall just before Christmas and ran into a man he and I both knew within the funeral industry.

This man asked, "How are you doing? Where are you working?"

When he told him the funeral director involved got incensed and let him know that he and organized funeral directors had no use for businesses such as mine and they would do their best to get me.

I received a while back, after some news appeared in the papers and some things I was doing, somebody made a special effort to come by my house with a copy of the Los Angeles Times and right

above the headline on it "This would be a real nice place for you to move to" and shoved it in through my front door.

I have gotten a number of telephone threats against my well-being and well-being of friends of mine.

Mr. ECKHARDT. What kinds of threats?

Dr. REVELEY. Somebody called a lady that I date and told her they were glad she was home and as soon as I got there they would try their best to get both of us.

They called me at work and made the same threat against her well-being to me over the phone at work, things of that nature.

Mr. ECKHARDT. You couldn't identify the callers?

Dr. REVELEY. No; I couldn't. It might have been totally unrelated to funeral directors.

Mr. ECKHARDT. Have you—

Dr. REVELEY. I have stepped on toes in other areas than the funeral business.

Mr. ECKHARDT. Had you commenced your funeral business at the time the Texas law was under consideration?

Dr. REVELEY. Sir?

Mr. ECKHARDT. Were you in the funeral business at the time the Texas law was under consideration?

Dr. REVELEY. Yes; I had already opened it up. When I found out the legislature was going to be acting on this, I just volunteered my services to Senator Doggett in charge of the sunset review.

Mr. ECKHARDT. Did you experience any activity on the part of anyone to discourage your appearing before the Texas Legislature?

Dr. REVELEY. No; not before, but afterward one of the funeral directors did come up to me and let me know that he and some of the people that I had previously worked for were very, very disappointed in some of the things I had said and they just felt like I had really done them wrong by getting up and making statements like I have given here today. That was about the only thing said at that time.

Mr. ECKHARDT. Ms. Whitney?

Ms. WHITNEY. You said you have been harassed and threatened by some people in Texas. Can you tell us exactly what is the basis for these threats?

Dr. REVELEY. They don't like what I am doing.

Ms. WHITNEY. Specifically.

Dr. REVELEY. Well, I am going out and running advertisements in the paper to tell people they have lots of different options on funeral services.

I was very involved with the legislature in making changes in the bill proposed by the organized industry in the State of Texas.

There are any number of things. I have a very busy public speaking schedule. I am called on often to go to various civic organizations and senior citizens organizations to let people know what the new laws are and what their rights are under the laws. They don't like what I am doing.

Ms. WHITNEY. You mentioned a few moments ago that you thought if anything embalming might possibly be a public health hazard and refrigeration in your opinion would be the most sanitary way of dealing with a dead body.

Dr. REVELEY. Yes.

Ms. WHITNEY. Can you tell us of any instances you know of where embalming has caused a public health hazard?

Dr. REVELEY. Yes. It seems to me if you walk into a funeral home first thing in the morning and walk into a room where bodies are in public display and they are bloated and draining from the eyes, nose, and mouth that that is a public health hazard.

Ms. WHITNEY. I am talking about any instances of communicable diseases being spread, that kind of thing.

Dr. REVELEY. No; I couldn't.

Ms. WHITNEY. That is all, Mr. Chairman.

Mr. ECKHARDT. Thank you very much.

Mr. MOTT. One more question, Mr. Chairman.

Mr. ECKHARDT. Surely.

Mr. MOTT. What is the percentage of profit in selling a casket by a funeral director?

Dr. REVELEY. To tell you the truth, I really don't know. I am operating at a loss right now. As things progress I hope not to be operating at a loss. It will take a little more volume than I have now. I don't know what that would be.

Funeral directors claim about a 10- or 12-percent return, but I believe you will find that is after their salaries are paid and their corporate profits and dividends come off. Then that return is 10 or 12 percent. I am sure it is more than that.

Mr. Gore, I would like to give you the name of the paper and reporter. May I write it down for you?

Mr. GORE. Yes.

Dr. REVELEY. All right, sir. I don't believe in one of these papers that the reporter is still there, but I do happen to know this one is.

Mr. GORE. I didn't mean to challenge you. Having been a reporter I know there are a lot of reasons a story, once begun, does not run. It is an atmosphere where conditions can lead one to a conclusion which may not be so.

Dr. REVELEY. If I had not spoken to these people personally about the situation I would not have made the statement.

Mr. GORE. All right. Thank you.

Dr. REVELEY. Thank you.

Mr. ECKHARDT. Mr. John Bowman.

Do you solemnly swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BOWMAN. I do.

Mr. ECKHARDT. You may proceed, Mr. Bowman.

TESTIMONY OF JOHN BOWMAN, LOUISVILLE, KY.

Mr. BOWMAN. I would like to apologize for not having a prepared statement. We are in a bind now and have been working weekends and nights since this was on the air. I didn't have time.

As a result I will be working from my memos and notes. Bear with me, please.

First I want to give everyone an idea of the scope of the investigation—a 3-month investigation. Here are some of the main points.

We started out by calling consumers, funeral customers, whatever you want to call them, who had done business with a funeral home about which we had received complaints.

Having been made aware of the Federal Trade Commission report, I went to the public library and read 526 pages back to back.

I then got copies of the existing State regulation in Kentucky and I didn't find a single piece of legislation which has anything to do with any of the consumer type protection proposals advocated by the FTC. In calling the Legislative Research Commission I found none are currently pending.

We made a random survey from obituaries of a few months ago and found a high level of consumer satisfaction. About the only thing they said was that bills seemed high to them but they more or less wrote that off to inflation. That was 15 people we called.

I looked at all the lawsuits involving funeral homes in my county in the past 2 years. There were 44. Out of 25 of those it was a case of a funeral home suing someone who could not pay his bill.

I posed, along with a woman, as a consumer. We shopped at four local funeral homes. They were picked on an unscientific random basis.

We also posed as consumers and made telephone calls trying to get prices. Out of eight places we called, six did give general prices, low-range to medium-range prices. Two said the funeral director was not there and could not give price information.

Having talked to a member of a local memorial society, apparently that situation has changed in just the last 3 or 4 years—they could not obtain prices back in 1976.

I looked at 10 probate cases to get a general idea of funeral costs. I looked at records and minutes of the Kentucky State Board of Funeral Directors and Embalmers over the past 10 years. In general we talked to funeral directors and off camera about their feeling concerning the regulations, abuses, and costs of dying.

When I first became involved in the project I had never even heard of the proposed FTC rule on the funeral industry. A funeral director called one of our reporters and said there was a new funeral home in town called the Old Colonial Funeral Home and said it was skirting a State law and selling worthless contracts for a nonexistent ambulance service. The reporter who called did not have time to look into it so she handed it over to us. Being an investigative team we had more time to look into that.

After talking to some of the consumers who bought contracts and agencies investigating, I went to one of the principals involved with the funeral home. Of course I got a totally different story.

He said that the established funeral industry in Louisville, especially the funeral director who had originally called us, was trying to run the Old Colonial Funeral Home out of business because it was aggressively selling preneed funerals and was offering a lower priced funeral than the other homes.

I remembered that the funeral director who had originally called us told me that Old Colonial was taking some of his business but his main concern was in protecting the people buying the contracts.

Anyway, this man gave me a huge file of news clippings. There were news stories referring to the Federal Trade Commission report on the funeral industry. That is when I read it.

I come from a small town in Kentucky. Frankly, I was pretty shocked at some of the charges being made, especially those supposedly widespread—sophisticated merchandising techniques, misinformation, psychological manipulation, trying to drive low-priced competitors out of the market.

I knew at that point that regardless we already had a story. However, I thought it would make a more interesting story if this kind of thing was going on in Louisville and we could show it.

In general we only like to use undercover work or posing as a last resort. However, it became clear quickly that in order to get this story on a firsthand basis we would have to do just that.

Therefore, about a month ago I went on one of my rare shopping trips. With me, posing as my wife, was a staff artist at our station named Teresa. My partner on the investigative team, Dick Krantz, said that since what we found might reflect on the funeral industry as a whole that we should choose the places we went to on a random basis rather than going to places we suspected or on which we had received complaints. That is what we did on an unscientific random basis from the yellow pages.

The first place we went to was a funeral home which is part of the largest chain in the State, the Arch Heady Funeral Home. It has 7 of the approximately 40 homes operating in Louisville. One person told me they do 1,500 of these 6,500 deaths a year in Louisville. It is an established firm and, as far as I could tell, it has a good reputation.

When we arrived there we told the funeral director that we wanted a dignified but inexpensive and simple funeral. Her name was Carol Lewis.

She made no attempt to persuade us to buy a more expensive funeral at that time. She said a lot of people feel that way and there is nothing wrong with that as long as you feel good about it. She said she would feel the same way if she had children at home to take care of.

We proceeded to go to the casket display room. When we got in there the funeral director told us it wasn't a State law but a cemetery law that we had to have an outer receptacle or grave liner. She had these in only little models.

The vaults, generally metal, running from \$400 up to thousands of dollars, were displayed. They were about a foot in length and there was only half of them there.

The grave liner, made out of concrete in general, was displayed as something I would say about 6 to 8 inches long. Even though it was supposedly a model of the entire thing, you got the impression the vault would be a much larger thing, and it is larger but not to that degree.

Anyway, the cheapest grave liner, concrete grave liner, was flat topped. It sold for \$240.

The next least expensive one was also concrete but arch topped. It sold for about \$280.

The funeral director told us that the only problem is none of the caskets in her display room which were metal would fit into the flat top box because they have arched tops.

A survey of six cemeteries, the largest ones in the Louisville area, found this to be a false statement later.

She then said you cannot go to a vault supply company directly to get a vault. You can get one only through the funeral director.

A survey of cemeteries in Louisville found some offer them on an at-need basis, not ahead of time but before you make arrangements with the funeral director.

After being shown around the display room we found that the cheapest metal casket in there was \$345. She said, "This is the minimum casket."

I asked whether this was the least expensive casket she had to offer. She said no. She did have a wooden one made of something like plywood covered with doeskin but she kept it down in the cellar garage. She said it was flat topped and would fit in a flat topped grave liner. She said she would be glad to show it to us if we wanted to go down there. We told her we would.

She paused at the door from the casket display room and said to Teresa, "Don't be afraid to go down there. There are apartments and people live in, so it is not as frightening as it looks."

Before she turned the light on it looked pretty frightening. It was dark.

She turned on the light. We looked at a tunnel sloping downward about 10 feet wide and maybe 60 to 80 feet long. It led to a garage with plaster board walls.

Inside was an old washing machine, a ladder, a lampshade, and up against a wall a casket covered by brown paper much like a grocery sack. Behind the casket was a large area of exposed wiring and fuses.

Mrs. Lewis swung the casket out from the wall and peeled the brown paper off it revealing a casket covered in blue-gray cloth with flowered pattern. The lining was as nice as the caskets upstairs.

Mrs. Lewis noted this casket was only \$50 less than the least expensive metal one, although the tag inside was outdated because it was so long since they brought anyone down there.

We decided we weren't interested in that casket.

When we arrived back upstairs I asked Mrs. Lewis if the least expensive casket was sealed. She said no.

I asked what other than looks would be the difference between that and the one downstairs. She said the difference was that the metal one would never collapse.

I asked whether that meant the one downstairs would collapse. She said if it was made of plywood with all that weight it would eventually fall through.

I asked if that is what the vaults were for. She said yes, that some of the vaults are so tight it is impossible to open them unless cut in two. If you don't have a sealer water would get in.

I asked whether any expenses might be taken off of services. She said, "If you don't want two of the limousines we do give a little off."

I asked about the organist. She shook her head and said, "You can't imagine how dull a funeral can be without an organist."

Most of the caskets in the display room, counting the services, were in the \$1,600 to \$3,000 bracket. The most expensive ones were on the right side of the room. The least expensive were on the left side of the room.

The next place we went was Ratterman & Sons Funeral Home. There are six funeral homes in Louisville with the Ratterman name attached to them. I discovered they are not an actual chain.

We also told Mr. Ratterman we wanted a simple, inexpensive funeral. When we went into the display room Mr. Ratterman told us the prices on the cards included the total cost except for incidentals and cemetery charges.

He also told us that the cemeteries required a receptacle or concrete grave liner or metal vault.

We asked what they would cost. He also led us to a display of miniature receptacles.

He didn't even have on display the flattop, less expensive grave liner. He explained that the flat-topped concrete model was the cheapest at \$240 but "We don't recommend it because we have had some problems with it."

I asked what kinds of problems. He said, "They tend to collapse. They don't hold up very well. Water tends to seek its own level," he said.

A later survey of the six largest cemeteries showed none had problems with the flat-topped grave liner.

When we told Mr. Ratterman we were shopping around basically to compare prices and find an inexpensive funeral, he told us the prices would be the same no matter where we went. "You could go to Lexington and get about the same thing for the same price."

I asked what the difference between the sealer and the nonsealer casket was. He showed me a rubber gasket on one of the sealers and said, "This would make it airtight and waterproof."

I asked whether this was to protect the body. He said yes, "but you get most of the protection from the vault if you buy a metal vault."

I asked why anyone would buy a sealer if the vault was protection.

He said, "Peace of mind." He added the Bible says:

Ashes to ashes and dust to dust and we can't do anything to stop that, but still it gives people peace of mind to know that the casket or vault is watertight.

We asked when we came out of there to get some kind of a price list. We did get a price list.

We began to ask whether there were any services we could take off the whole service amount. He also told us we could take off \$35 if we didn't want the extra limousine.

We told him the bill was still more expensive than we had expected and asked if we had only 1 day's viewing rather than 2, whether we could get anything off. He said if a family just wants to view members only, he could knock 15 percent off the final bill.

I asked if the service charge included embalming because it was not mentioned anywhere on the statement. He said, "Yes, it does."

I asked if we didn't want any viewing, no open casket, just a simple memorial service, if it would be necessary to embalm.

He said:

Oh, yes; embalming is just about required if you are going to keep the body for 24 hours and it would take that long before we could get him ready.

We determined there that using the cloth covered casket, a flat-topped liner that is not recommended, getting a discount for the

limousine, and taking 15 percent off for no visitation, the cheapest funeral we could get would be \$1,109.

Mr. Ratterman told us the main thing that costs, where figured on other than merchandise, was the overhead. That was the same all over.

At the third funeral home we also said we wanted an inexpensive and simple burial. This funeral director brought up the subject of cremation. He told us we could get it done for \$300 to \$400 and many people were choosing this.

He said:

You wouldn't need a casket for cremation unless we were going to have viewing, in which case you would need a casket.

He said the funeral directors in town all offered basically the same services for the same prices, that they had an association, and basically it would do no good to shop around—although he said his might be a little cheaper because he was a little out in the county and the cemeteries where he buried people did not require a vault.

He took us to the display room. He didn't have his least expensive casket, which would have been the doeskin model, or the least expensive metal casket in stock. He said he could get the least expensive metal casket the next day.

I suppose some people might buy a casket they had not seen. I don't know.

The fourth place we went, it was the last place I went, was a downtown funeral home. Here we weren't trying to find an inexpensive funeral necessarily. We just wanted to go in and see what would happen to a person not shopping around. The casket display room in this funeral home had actually two. If you sat in the office of the funeral director, there were open hallways back into a large display room with chandelier and wallpapered walls, plush carpet, soft lighting. There were the most expensive caskets. It was all open air back into the office.

However, to get to the inexpensive caskets, the least expensive casket and sealer casket and metal casket, you had to go to a smaller room which had a sliding door which was closed. When you went into that room the floor was hard, the wall was cheap wood paneling. On the walls were pictures of the nicer caskets.

This funeral director did list embalming as part of his service. This was the only funeral director who either by statement or on his sheet listed embalming.

We asked whether embalming was really necessary. He said, "Oh, yes, especially if there is an autopsy. I would not skip embalming because they take some of the organs out."

I pointed out the casket would not be opened. We would just take a simple memorial service with a closed casket. He said he could not keep a body that long without embalming.

We asked another question. On the sheet there was a hearse for \$55 and \$75 for a fleet. We asked what the difference was. The fleet involved two extra cars.

He told us that the \$55 was for the driver to take the body to the cemetery while the \$75 was for the rental of the hearse itself.

My partner went to two other funeral homes doing basically the same thing, but I could not testify as to anything he found.

When we spoke to funeral directors, both on and off camera, they suggested that if there were abuses the simplest thing to do would be for the people to take those complaints to the State Board of Embalmers.

As a result, I drove down to Beaver Dam, Ky., 2½ hours from Louisville, and I looked at their State records. I found that they get an average over the past 10 years of only three consumer complaints a year.

Some of those complaints—well, I will read a couple letters I got copied that day.

This is a letter to the secretary of the State board from a Mr. and Mrs. Melvin Morris of West Water Valley, Ky. Their son, David Morris, had died as a result of an automobile accident.

They said that embalming was done and performed by Mr. Robert Vanderford of the Vanderford Funeral Home located in Tennessee. However, he picked up the body at Fulton, Ky., without authority and took it to the State of Tennessee.

Please advise as to whether you have jurisdiction over Mr. Vanderford and whether he is licensed in the State of Kentucky. We wish to bring the matter before the proper agency for the unethical manner in which he conducted his services and handling of the body.

Here is the true reply:

Your letter concerning your son, who was killed on March 25, 1972, was reviewed by the State Board of Embalmers and Funeral Directors at their meeting in Louisville, Ky., on June 12.

After reading your letter and discussing it, the board came to the decision that this was not a matter or violation for this board to consider. Rather, they suggest you seek legal advice whereby they could advise you just what course of action to take.

Here is something else:

We are returning your death verification as you requested and want to tell you how sorry we are for the unfortunate thing that has happened to you.

Mr. ECKHARDT. That referred to the death, I assume.

Mr. BOWMAN. That is hard to say.

Here is another letter, 1977. This is from a couple who were from Toledo, Ohio. They charged they have definitely been overcharged by the Arch Heady Funeral Home in Louisville, Ky. It says:

We have been definitely overcharged. Since we were from out of town notices already had appeared in the Louisville paper.

They took advantage of the situation. They didn't want any notices in the Louisville paper to see they are from Toledo.

They say, "I have checked with another home who said that they charged around \$300 to \$350 for the exact service for out-of-town clients." The bill I have here attached is for \$1,005.

The reply of the board:

Your letter of February 21, 1977, and a copy of the funeral bill from the Arch Heady Funeral Home were reviewed by this board at their last meeting on March 7, 1977. This board is the licensing board for the funeral directors and embalmers of Kentucky. Your complaint does not come under the jurisdiction of this board.

We are referring your letter to the Ethics Committee of the Kentucky Funeral Directors Association for a reply to your complaint.

I found in looking through the minutes of the board that much of their time, much of their discussion, has to do with complaints from one funeral director about another funeral director concerning establishing branch funeral homes that do not have a licensed

funeral director or falsifying records as to who was an apprentice—a full-time apprentice.

Another thing that the funeral directors told us when we talked to them was that if there were real problems there would be more complaints, but you rarely hear a complaint from a consumer about the funeral industry.

I talked to two women on the telephone last week. Both of these women are now being sued by funeral homes. One's name was Doris J. Brown. She purchased a \$2,600 funeral.

She said she was being sued because she did not have enough money to pay for it. She went in by herself. She wasn't sure who the funeral director was. She said she set up the arrangements herself. She had never done it before. If she ever did it again, she was setting up her own arrangements for her own funeral so her survivors never would have to go through what she did.

She said under the grief she was beside herself. If she were under her right mind the whole thing would have been different. It was way above her mind. She never dealt with anything like that.

The funeral director suggested whatever you did should be the best thing you could do.

She said, "Basically you learn through your mistakes." She didn't think the funeral director did anything to influence her to buy a more expensive casket. Cost of casket in this case was \$1,200.

She told us at the time she would talk to us on camera but later she changed her mind. I think perhaps more enlightening would be the case of Irene Grace, to whom I also spoke last year. She purchased a funeral costing \$2,680. It was for her mother.

She now has a lien out on her house. She is paying the funeral director monthly. He sued her and got a default of judgment.

She said when she went into the display room she picked out a white casket. It was almost the best one. She picked it because she had never seen a white casket before. There were no prices on the caskets.

She said, "I should have asked but I wasn't thinking about it. I had four sisters-in-law with me, but I had to do it myself. I had never done it before."

She kind of felt her mother didn't have enough insurance but she thought at most she would be paying an extra \$200 to \$300.

She didn't know the price until the final bill. The price didn't really shock her, not these days with everything as it is.

I told her at the time the FTC was proposing regulations which would require the funeral director to supply a price list before the arrangements and also casket list before going into the casket display room. She said that really would have helped her before going into the display room to have had a price on the casket.

I asked her if she was resentful of her funeral director. She said, "No. He was a nice man. He still is. I am paying him off." Her husband told her it was her fault because she didn't ask the price.

In the State of Kentucky there are 34 various boards which regulate various industries. There is a lawmaker in Kentucky who for the past two general assemblies, including one going on now, has proposed sunset regulations, similar somewhat to the bill which would be the FTC authorization bill.

The person who introduced that legislation said that out of 34 boards the main opposition to the sunset law is coming from the funeral directors.

There is an attorney in Frankfort named Laura Murrell. She says she favors the sunset bill because she feels a client of hers was a victim of the protectionist impulses of one of them.

The State Board of Embalmers and Funeral Directors, by law four of the five members of the board are selected by the Governor. They are members of the Kentucky Funeral Directors Association. The other member is a consumer representative.

Last year the board revoked the license of her client, David Oxier, of the Old Colonial Funeral Home in Louisville. According to the board's findings the license was suspended for reasons which had nothing to do with embalming or arranging a funeral. Instead, the board said Old Colonial had violated a section of the law which prohibited funeral directors from soliciting business by offering or giving a service not normally part of the funeral service.

The unusual service cited was a plan by the funeral home for nonambulance service containing an option for a low-cost funeral.

In a suit filed against the board, Mrs. Murrell discovered the free service, which the ambulance service was not—that the ambulance service is not part of a funeral service.

The plan for the combination of services had been approved by the State Department of Banking and Securities which regulates the sale of funeral service arrangements to the living or preneed sales.

In the suit Miss Murrell charged the Louisville area funeral homes attempted to drive Old Colonial out of business because of its traditional distaste for letting the living arrange their own funeral services.

She cited a Federal study which concluded that funeral homes feel a living person will purchase a less expensive funeral than the grieving survivors will.

When you talk to funeral directors in Louisville they speak of the sunset legislation as if it would repeal the Board of Embalmers and Funeral Directors, and say this will hurt the consumers.

However, what the bill actually does is to give the legislature a chance to review that board every few years to see whether they are doing their job, if they are protecting the consumer.

The State Board of Embalmers in Kentucky has not had a person doing field inspections of funeral homes since 1972 because they do not have the budget or the money. They are governed by chapter 316 of the Kentucky Revised Statutes. That section has nothing in it that is being proposed by the FTC.

However, in arguing against a sunset law they are arguing against a piece of legislation that could possibly give them the authority or the budget, if it is needed, to protect the consumer.

That is all I have.

Mr. ECKHARDT. Ms. Whitney?

Ms. WHITNEY. Mr. Bowman, have you ever personally had a bad experience with a funeral director?

Mr. BOWMAN. No; I have never made any arrangements.

Ms. WHITNEY. You said earlier in your testimony that you had a telephone interview of some Louisville funeral directors and you

were attempting to get price quotations from them by telephone. Is that right?

Mr. BOWMAN. Yes.

Ms. WHITNEY. What was the total number you called?

Mr. BOWMAN. Eight.

Ms. WHITNEY. Of those eight, six gave you prices over the telephone?

Mr. BOWMAN. That is right.

Ms. WHITNEY. Two did not?

Mr. BOWMAN. That is right.

Ms. WHITNEY. Three-quarters of those you called did give you prices over the telephone?

Mr. BOWMAN. Yes.

Ms. WHITNEY. Are you aware of the advertising program that is now being sponsored by the Louisville Funeral Directors through the Allied Memorial Council providing folders of information and suggesting calling for further information and preplanning of funerals?

Mr. BOWMAN. Yes; I am.

Ms. WHITNEY. Mr. Chairman, at Mr. Lent's request, I would like to introduce one of those folders into the record.

Mr. ECKHARDT. Without objection, it will be entered.

[The material referred to follows:]

Should I Plan Ahead For Death?

This handbook is for those who have the foresight to plan ahead; it has common-sense information about making funeral and cemetery arrangements before the need arises.

Why Me?

None of us likes to think about death, separation, or loneliness. It is far more pleasant to enjoy today with our loved ones, and hope that tomorrow will take care of itself. However, death is sure to come. The only question is, shall I plan ahead or leave these decisions to others?

The following discussions are offered by a collection of concerned and reputable professionals in the related fields of funeral and burial services. They represent many years experience in their fields. It is the hope of these people that you will make informed and intelligent decisions when you exercise selections of funeral arrangements in a pre-need situation.

There are many choices to make, and some of them can be bad ones, in terms of cost to you, your descendants, and the community. Before you are approached by a door-to-door salesman, and for your own protection against misrepresentation of any sort, take time to consider some of the following points. Also, feel free to ask further questions from any of the participating firms, listed on the inside, right hand cover.

This booklet written and produced by the Jefferson (and surrounding) County ALLIED BURIAL COUNCIL.

Pre-Need

INTRODUCTION

"Pre-need". This is the term used when a family purchases funeral goods and services before need.

We know from experience that it is wise to select your cemetery lot, funeral, and memorial in advance. There can be a real savings and even more importantly, a peace of mind that comes from making these decisions TOGETHER.

Since these items are a once-in-a-lifetime selection, the average consumer does not always have the background to compare values. We advise that you consider these ideas before making any selection:

1. Beware of a "deal", that is, good for tonight only.
2. Beware of unreasonable savings.
3. Watch out for "new", unproven ideas.
4. Deal with established, local firms.
5. Ask at least one related businessman what he thinks of the contract.
6. Phone your funeral home for their opinion of the value and savings that you have been offered.

Memorial Society

There are various Memorial Society plans offered today. Most are connected with religious organizations. They usually try to provide an immediate disposal service at time of death. There are a few questions which you should ask before joining any Memorial Society.

1. Is the membership fee a small amount for the Society's services?
2. Can you get your membership fee back should you decide not to use the Society's package or if you moved away?
3. Does it guarantee you a fixed cost which won't increase with time for the service?
4. Are you paying interest on the membership fee before you receive any Society services?

If you are unsure of the answers to any of these questions, contact your local funeral director.

Monuments

POINTS TO PONDER:

1. Will my pre-need memorial actually be delivered after I have paid for it?
2. Will the cemetery lot I select allow the style of memorial I want?
3. Will my memorial be a point of family pride in years to come?
4. Should I pay interest on a memorial that I have not received?

THE MARKER OR MONUMENT SHOULD ACCOMPLISH THREE THINGS:

1. MARK the resting place of a unique human being.
2. Have an HISTORICAL record. This may include such things as date of birth, death, marriage, parent's names, children's names, even a person's profession and hobbies.
3. Express LOVE - A verse from a song or the Bible or the single word "Mother". All of these things work together to help us express our feelings and tell of a life well lived.

SELECTING A MEMORIAL INVOLVES THE FOLLOWING:

1. MATERIAL - Most memorials are built of granite, marble or bronze. There are many grades and qualities of each. In granite and marble the color, hardness, texture, and effects of water and weather are most important in selection. Bronze may be made of different alloys that will affect quality.
2. SIZE - In most cases the selection of your cemetery lot will determine the size and style of your memorial.
3. PRICE - You can control your expense in a memorial by your selection of material, size, design, and lettering. You can get ideas about prices with a phone call to any local monument firm.
4. DESIGN - This includes selection of shapes. A sundial, cross, or the more usual tablet on a base or grass-level marker are available. On granite and marble memorials, one may create and develop his own ideas for design and ornamentation. This is one of few places left where one may express his own personality and traits in a permanent way. A visit to older cemeteries will point out how effectively this has been done in the past.

TO BE SURE YOUR MEMORIAL IS JUST WHAT YOU WANT, HERE ARE SOME IMPORTANT ITEMS:

1. Be sure the cemetery lot will allow the style of memorial you prefer.
2. Be sure the dealer is:
 - A. Established and reliable.
 - B. Well-trained in design.
 - C. Shows you adequate samples of material and lettering.
3. After you have paid for the memorial, it should be delivered.

ADVANTAGES AND DISADVANTAGES OF MARKERS AND MONUMENTS.

GRASS LEVEL MARKERS

1. Average cost 20% less than upright monument.
2. More apt to accumulate dirt.
3. Difficult to locate.
4. Difficult to personalize design.

ABOVE GROUND MONUMENTS

1. Easier to locate.
2. Wider variety of prices.
3. Each one designed for the person it represents.

The Cemetery

POINTS TO PONDER:

1. Should I beware of a free grave space, particularly if other services or products are offered for sale at the same time?
2. If the property is not fully developed, do I have a clear understanding about when it will be?
3. Do I know what my total interest cost will be?
4. Should I see what I plan to buy, so I can be sure it looks as good as the picture?
5. What percentage is put aside for perpetual care? (Perpetual care is the amount of purchase price set aside for future maintenance and upkeep of the cemetery.)

Today's cemetery offers a wide variety of services. However, the traditional underground burial is still the most used and time-proven form of interment. The Louvre are in most fortunate to have almost a hundred year supply of ground space left in their present cemeteries. Since each lot is different in location and landscaping, you can make a better decision if you see what you buy.

A cemetery should have a peaceful atmosphere and be a place for reflection and remembrance.

Some cemeteries sell burial suits. Check with your funeral director first, to see if the suits offered are of quality construction and warranted. This comparison may save you disappointment as well as dollars.

Cemeteries charge extra for grave and entombment opening. They require payment before burial.

Some cemeteries do not allow burial on Sundays, holidays, or days following holidays, if that holiday falls on Sunday. It is wise to ask about the extra charges which might occur on such special days.

Kind of products sold
and trust fund deposits.
(% shown represents portion of sales price
put in perpetual care trust fund.)

Name of Cemetery	Number of acres of Land Left for Burial	Community Mausoleum	Land	Lawn Crypts	Cemetery Ownership	Interest Free Terms for Pre-Paid Purchasers	Special Prices for Undeveloped Land
Bethany Memorial Cemetery Inc.	20 Acres	None in Cemetery	90%	None in Cemetery	Private Stock	3 Years	Yes
Calvary Cemetery	250 Acres	Construction Due 1980 50% Planned	50% to 80%	None in Cemetery	Church	2,3,4 Years depending on lot size	No
Cave Hill Cemetery	54 Acres	None in Cemetery	50%	None in Cemetery	Public Non-Profit	12 months	No
Evergreen	30 Acres (undeveloped)	10% & 5%	20%	None in Cemetery	Public Stock	60 days	Yes
Louisville Memorial Gardens East & West	14,000 Graves West 30,000 Graves East	5%	20%	None in Cemetery	Private Stock	36 months	Yes
Reverend Memorial Park	85 Acres	10%	20%	5%	Private Stock	90 days	Yes
St. Louis Cemetery	1/2 Acre	None in Cemetery	50% to 80%	None in Cemetery	Church	2,3,4 years depending on lot size	No

Vaults

The selection of the outer burial container should be a part of the arrangements for the Funeral Service. This is just as important as the other factors that make up a complete funeral service, and should not be something considered an extra after all other arrangements have been made.

Most cemeteries require the use of some type of permanent outer container for burial of the casket. Whether it is a vault or just a grave liner, it must sustain the earth's weight above it, and must not deteriorate in a short period of time. It should protect the casket and eliminate costly upkeep of the grave site.

A cemetery's minimum requirement is a concrete grave liner, but the liner does not protect the grave from water as a sealed vault does. Various types and designs of water resistant, nationally advertised sealed vaults are available through the funeral director. Ask him about the different qualities available.

Mausoleum

POINTS TO PONDER:

1. Will any building last forever?
2. If your mausoleum is damaged or destroyed by a tornado or other act of God, who will be responsible for replacement? Should you ask your attorney?
3. Will the interest on the perpetual care fund keep the building in repair for eternity?
4. What will your total cost be, including interest?
5. Should you ask for outside advice about construction and other possible problems?
6. Have adequate provisions been made for the drainage of moisture, for ventilation to remove odors, and for pest prevention?

MAUSOLEUMS ARE PRIMARILY OF TWO TYPES.

One is the private or family mausoleum, usually built for one to twenty remains of the same family. While this is a very dignified and satisfactory way of burial, it is also more expensive with costs running from \$3,000.00 to \$4,000.00 per space. The private mausoleum is usually built of solid granite or marble.

The public or community mausoleum is the second and most used type. The price of space in such a facility is somewhat less. Construction is usually of concrete with marble or granite veneer and built-up roofs.

1. How long will the building last? If properly designed and maintained, the building may endure for many years. But the question of maintenance is crucial. Mausoleum industry leaders have said that the life of a building depends 99% on maintenance. The best materials are of little value without a definite maintenance policy enforced and secured by a sound endowment.
2. Since there are no code requirements for structures of this nature in Kentucky, would it be a good idea to get a second opinion from an engineer or family funeral director, rather than take the word of the monument or mausoleum salesman? The construction of a private or family mausoleum involves substantial expense. Whether consideration is given to a public or private mausoleum, the ultimate decision should be reached after careful consideration of all available information.
3. Kentucky law requires only a 9% perpetual care deposit for interment in a public mausoleum. Is that perpetual care deposit adequate? Mausoleum industry leaders have said that at least 30 to 35% of the sales price should be set aside for permanent care of the mausoleum. Care must be taken that adequate provision is made for all future upkeep costs. This is especially important given today's high rates of inflation.
4. Should a non-feeding casket be used in a mausoleum? Some cemeteries say no, and others say yes. Your family funeral director can provide good counsel on this question.

Much of this information from THE CATHOLIC CEMETERY, Feb. 1966, pp. 19-20.

Funeral

POINTS TO PONDER:

1. Does the selected funeral home have a reputation on which you can depend?
2. Is it wise to purchase any secondary services at the same time I pre-arrange my funeral?

Beware of a "deal" whereby you must buy a second product or service in order to get a so-called savings on the funeral. Quite often this other service or product is used to pay a commission to the person selling it. Kentucky law requires 100% of the funeral expense to be deposited in trust.

3. If I make an advance selection and pay for it, can I get 100% of my money back, plus interest, if I change my mind?

IF THE ANSWER IS NO TO THIS QUESTION DON'T SIGN ANYTHING UNTIL YOU SEE YOUR LAWYER.

4. Is the outer burial container manufactured by a reputable vault firm who is known in the community for quality work?

Beware of the inexpensive sideline vault operation. Check their quality carefully.

MAJOR CONSIDERATIONS IN SELECTING A FUNERAL HOME MIGHT BE:

1. Cost of services, goods, and related items, can be adjusted to fit the needs and preferences of each family. No one can provide funeral services more economically than your established funeral director because he pays no sales commission to door-to-door salesmen.
2. Don't let a door-to-door salesman take you to an unknown location.
3. The attitude of funeral director and staff toward serving people is important.
4. Does the funeral home have the ability to accommodate flow of traffic, and especially that of older people? Do they have proper furnishings and accommodations?
5. The reputation in providing those services and products which have been promised.

The funeral is a meaningful event which offers an opportunity for individual preferences to be carried out. Many people are finding today that pre-arranging is one way to approach funeral planning so that personal wishes can be carried out and so that financing may be provided ahead of time.

WHAT IS PROVIDED BY THE FUNERAL HOME?

FACILITIES. In addition to the physical facilities of the funeral home, there are many other services which include sanitation of the body, personnel and staff, and motor equipment.

ADDITIONAL SERVICES. Known as accommodation items, these include clergy fees, family flowers, newspaper announcements, and copies of death certificate, as well as arrangements for shipping remains to other locations and arrangements for cremation. Cremation sometimes replaces the more traditional burial, yet allows viewing and customary funeral services. The remains are burned, and the ashes are kept by the family, placed in a columbarium, or buried.

CASKETS. Caskets are constructed of different types of materials such as wood, metal, or fiberglass, and they vary in cost and quality of construction.

RIGHT WAYS OF PRE-PLANNING FUNERAL COSTS:

PRE-PAYMENT TRUST PLAN. A person selects what goods and services he wants and pays for these in full or on an installment basis to the funeral director. Kentucky statutes require that the funeral director create a trust fund at a financial institution where the trust earns interest.

Before entering into such an agreement, a person should make sure that the trust can be cancelled and refunded, upon his request.

PLANNED, BUT NOT PRE-PAID. In Kentucky, issues of burial insurance by Commonwealth Life Insurance Company, under contract with the Kentucky Funeral Directors Burial Association, can cover funeral costs.

PRE-SELECTION PLAN. You make all the decisions about funeral plans, but you don't pay for them until they are used.

ITEMS YOU SHOULD CHECK IN FUNERAL PRE-NEED FINANCING:

INTEREST. You should accrue interest on money deposited in an insured and reputable financial institution; if you must pay interest, investigate further.

WITHDRAWAL. If you move or change your mind, be sure you withdraw all of your money, including the interest.

GUARANTEES. Be sure all goods, services and merchandise are guaranteed to be performed or furnished as prescribed. Double check a new firm to be sure they will be around to stand behind that guarantee.

Ms. WHITNEY. Are you aware about 15,000 of these folders have been distributed at funeral homes, to clergy, senior citizens, and widowed groups and at public places and similar information is also being advertised on television?

Mr. BOWMAN. Yes.

Ms. WHITNEY. Are you aware that Robert F. Stephens, who was the former attorney general of Kentucky, wrote to Mr. Isaiah T. Cresswell of the FTC on September 11, 1978, saying that excesses by funeral directors at Kentucky are at a "bare bones minimum" and "there is clearly no need for any more Federal regulations in Kentucky?"

Mr. BOWMAN. No.

Ms. WHITNEY. Mr. Chairman, again at Mr. Lent's request I would like to enter this letter into the record, please.

Mr. ECKHARDT. Without objection.

[The letter referred to follows:]

September 11, 1978

Mr. Isaiah T. Creswell, Director
Federal-State and Consumer Relations
Federal Trade Commission
Office of Federal State and Consumer Relations
Washington, D.C. 20580

IN RE: Comment of proposed regulations relative
to Funeral Directors

Dear Mr. Creswell:

On July 14th of this year you wrote to the Honorable Julian Carroll, Governor of the Commonwealth of Kentucky, seeking his comments on the above reference proposed regulations. A copy of that letter was apparently forwarded to this office but some how, unfortunately, the letter was lost in the state bureaucracy messenger service. It has come to my attention that comments from state officers should be made before September 20th.

On September 16, 1977 I wrote a letter to Mr. Michael Pertachuk, Commissioner of the Federal Trade Commission relative to a report filed by Mr. Jack E. Kahn. I am enclosing a copy of that letter for your information.

I would like to say to you generally that, under Kentucky law, the Attorney General is the chief consumer advocate in the state. I have thirty one full-time and five part-time employees working for me and among other things we deal with consumer complaints that run the entire gamut of the business world, from funeral directors to automobile dealers. We keep vital statistics on the number and types of complaints and the ultimate resolution of same. In addition, my office, by statute, represents the state board of embalmers and funeral directors for the Commonwealth.

I would like to take this opportunity to reiterate my strong position as evidence by letter of September 16th of last year to Mr. Pertachuk and to reiterate my position as a member of the executive board of the National Association of the Attorneys General, who has taken a unanimously strong stand against the consistent and regular preemption of states right by the Federal government, particularly, by the Federal Trade Commission.

September 11, 1978
Page Two

The amount of consumer complaints that this office receives relative to these alleged "excesses" by funeral directors are at a bare bones minimum in this Commonwealth. It is my information that the major better business bureaus in the Commonwealth have a similar experience. I can also tell you that in a recent attempt to unearth this so-called problem, the Louisville Times, which is an investigatory type of newspaper in Jefferson County, Kentucky failed to come up with any evidence that would substantiate this claim about Kentucky funeral directors.

It has been my experience that the Federal government should only step into matters where state laws or state agencies are not doing or are not able to do an adequate job of regulation. If that premise is correct, and I believe it is, there is very clearly no need for any more Federal regulations and any competent new Federal bureaucracy to "take care" or to "regulate" funeral directors in the Commonwealth of Kentucky.

I believe that you will find this is a pretty standard situation throughout the fifty states with respect to the Attorneys General thereof.

I recognize that many young and idealistic individuals feel that it is their morale responsibility (and it may well be their responsibility) to unearth consumer frauds and other types of ripe-offs. I do not quarrel with this, and as a matter of fact, I have many staff members who do little else than the same type of thing that these individuals do. However, I believe this is a case where the problem has been much over stated with very little evidence to back it up and I am convinced that we in the Commonwealth of Kentucky through the attorney general's office, through the better business bureau, through the state board that regulates funeral directors and through local prosecutors are totally and completely able to keep a handle on the problem.

I protest very strongly any further interference by the Federal government in a matter which is clearly adequately handled by state government at the present time. I believe if you will reflect upon the attitude of the American public, as expressed by the widely growing so-called "Proposition 13", you will see that government money should be carefully prioritized and spent only in those areas where there is a clear and definite need for same.

Based upon the evidence that is before me, as chief consumer advocate in the Commonwealth of Kentucky, I think that any Federal interference or regulation is totally unnecessary and totally a waste of the tax-payers money, not to mention a clear preemption of states rights.

Very sincerely yours,

ROBERT F. STEPHENS
ATTORNEY GENERAL
COMMONWEALTH OF KENTUCKY

Ms. WHITNEY. Mr. Bowman, are you aware that the central Kentucky and Louisville Better Business Bureaus have reported the following numbers of funeral-related and death complaints: The Kentucky Central Better Business Bureau from the period of 1972 to 1975 reported 15 out of 10,700 deaths, 15 complaints out of 10,700 deaths?

In the year 1975 there were 2 out of 2,100 deaths.

In addition, the Louisville Better Business Bureau in 1975 reported 3 out of 2,299 deaths.

Mr. BOWMAN. I have heard some of those figures, but I didn't have them all in my head as of now.

Ms. WHITNEY. Mr. Chairman, again if I may introduce some letters documenting those figures, please?

Mr. ECKHARDT. Would you describe the letters, please?

Ms. WHITNEY. As I recall, the letters are—let me check, please. They are letters from the Better Business Bureau.

Mr. ECKHARDT. We can take care of this at a later time.

Ms. WHITNEY. They will document these figures.

That is all, Mr. Chairman.

Mr. ECKHARDT. Thank you very much.

Magr. Richard W. O'Keeffe and Mr. Gary L. Sheets, assistant attorney general and legal counsel to the Arizona State Funeral Board and Embalmers, Phoenix, Ariz.

Gentlemen, do you swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Monsignor. O'KEEFFE. I do.

Mr. SHEETS. I do.

TESTIMONY OF MSGR. RICHARD W. O'KEEFFE, MEMBER, ARIZONA STATE BOARD OF FUNERAL DIRECTORS AND EMBALMERS; AND GARY L. SHEETS, ASSISTANT ATTORNEY GENERAL AND LEGAL COUNSEL, ARIZONA STATE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Monsignor O'KEEFFE. Mr. Chairman, members of the subcommittee, my name is Magr. Richard O'Keeffe of Yuma, Ariz. Since 1975 I have served as lay member on the Arizona Funeral Directors and Embalmers Board. Thank you for the opportunity of allowing me to address the committee regarding legislation vital and necessary to the citizens of this country.

One year ago with the proposal of the FTC rule, there was hope that effective regulation nationwide would be brought to the funeral industry. Those of us who served our States and its consumers were heartened. No longer would we have to deal with antiquated State laws, unwieldy processes, and formal hearings that are expensive and time consuming to the public. The proposed rule would have set a standard for all States to follow that would have been equitable and just and in the best interest of the common good.

It would not and does not erode the function of the State regulatory boards. Recently in an editorial, the New York Times asked the question, "Why should Washington duplicate the function of State legislatures and regulatory commissions?" a legitimate question.

The answer is also reasonable and I quote:

Professionals are influential and therefore State officials are rarely willing to regulate the purely economic activities of professional societies. As a practical matter, States generally let professionals regulate themselves; they license the foxes to decide what is best for the chickens.

The implication is clear, the National Funeral Directors Association, in alliance with its State associations, will not, and does not, want the Democratic process to return to the ordinary people of this Nation. We shall again see all of the old problems cropping up: One, inadequate price disclosure; two, embalming abuses; three, overcharging in cash advances; and four, misleading claims with regard to State laws, caskets, vaults, legal requirements.

In Arizona we made an honest effort to have legislation similar to the FTC rule, introduced in the State legislature, so that when the FTC rule became effective the Federal Government would leave us alone and we would continue to police our own activities effectively. Another reason was we had to meet the industry where they were. They were willing to make some concessions, namely give the State boards investigative powers and civil penalties. Do not strip them and deprive them of their right to be able to deal with things at a local level. Nothing wrong with that, except that the industry in Arizona now realizes that they have a strong board, an effective attorney general's office, a Governor willing to appoint people committed to enforce the statutes fairly and impartially.

This was too much for the Arizona State Funeral Director's Association; the legislation is being stonewalled and will probably receive a respectable funeral, courtesy of the funeral directors.

In the 5 years we have served in Arizona, we have seen a do-nothing board mature and make some progress: From zero complaints in 1975 to an average of 35 cases completed each year through 1979. Through our legal counsel we have set up a fair and equitable investigative program. We have seen contract abuses, deceptive practices, insurance scams, advertising scams, cash transactions of up to \$1,200 with no records retained or available, misuse of trust accounts. We have seen board members intimidated. We have witnessed the fact that if you propose alternatives that it is regarded as un-American and not in good taste.

As we enter the decade of the eighties, there will be change, change that will be based on the desires and addressing itself to the needs of the public. We need your help. To face new technology and techniques we must be ready to encompass new definitions with the proposed rule.

Quoting the New York Times editorial:

It has become fashionable to decry Federal regulation as crippling to free enterprise. But the freer the marketplace the more the economy depends on the government to make business play by competitive rules.

We agree. Why should the public be denied its protection? We urge you to act for the public, not for any special interest group.

We know that the funeral industry is insisting on its rights, but it also has obligations. The obligation of facing a changing world and a changing industry, demanding new thought and new initiatives. At a State level we view this as an era of cooperation between Federal and State governments and not one of intervention, an era where board members both from within and without the industry can begin to serve the public.

Let me pay tribute at this time to the industry members, both in Arizona and nationwide, who, though at great personal anguish to themselves and their families, have seen our point of view and are ready and willing to act for the best interest of the public. We need your expertise on antitrust, white collar crime, and dummy corporations, training of our State investigators and sending them into the field equipped to do a good job, thereby saving millions of dollars for the taxpayers of this country.

Mr. Chairman, members of the committee, this plea is not on behalf of any special interest group, but on behalf of the ordinary citizens of this country, who know that when something goes wrong with their business transaction, that somewhere there is an agency of Government that will treat them fairly and impartially and protect their rights. That agency is the FTC in cooperation with your State boards. We are here not to preside over the demise of the FTC but to accept the challenge of change and cooperation to meet the needs of the people of this country in the years ahead.

All of us share a deep concern about the burden placed on the middle income and poor people of this country to be able to communicate with the Government. Without the help of the FTC it hits all of us where it hurts—the inalienable right to be heard at all levels of government.

Thank you, Mr. Chairman and members of the committee.

Mr. ECKHARDT. Mr. Sheets, do you have a statement?

Mr. SHEETS. Yes, Mr. Chairman.

Mr. ECKHARDT. You may proceed.

TESTIMONY OF GARY L. SHEETS

Mr. SHEETS. Thank you for having me appear before you today.

I have 6 years' experience representing State administrative and regulatory agencies in legal actions against State licensed professionals—for example, securities' salesmen, certified public accountants and funeral directors—in consumer and investor fraud matters; in the last 3 years handling consumer fraud and other disciplinary matters concerning funeral services industry. I now represent six different State regulatory agencies.

The Arizona attorney general's office and the Board of Funeral Directors and Embalmers strongly support the expeditious promulgation of the proposed FTC prices disclosure and fair dealing rule as minimum national standards for the funeral industry in consumer transactions. A copy of an October 10, 1979, letter to that effect has been passed around. [See p. 59.] This rule is vitally needed to facilitate communication of specific information about funerals to consumers.

There is a special need for consumer information and protection in funeral services transactions.

Characteristics of consumers and these transactions are: Many senior citizens are involved; there is grief, depression, shock, and—often—guilt; defenses are down and vulnerable—there is much trust in the funeral director; and it is a unique, nonelective, one-shot transaction—unlike other commercial transactions.

There is a serious information imbalance between consumers and funeral services sellers. Unlike other commercial transactions, there is no significant price advertising or communication of other

specific information to consumers prior to transaction; and there is lack of consumer knowledge or information regarding: (a) Detailed prices of goods and services; (b) comparability of prices among funeral homes; (c) alternative funeral arrangements, such as direct disposition and memorial services; and (d) legal requirements concerning embalming and the use of caskets and burial vaults.

In the context of grief and with no information, consumers are unlikely to know if they have been taken advantage of by certain overreaching funeral directors—reducing complaint experience. All this is important. Consumers don't know where to file complaints. States have different places to file complaints. If it involves the sale of mausoleum space or vaults, it might be a separate agency from the funeral services part of the transaction.

In Arizona the real estate department handles complaints concerning sale of mausoleum space, whereas the funeral complaints are in another organization.

Preneed may involve the insurance department. It is confusing to the consumer.

There are serious abuses of consumers in these grief transactions by certain members of the funeral industry: An elderly consumer was told she must purchase an expensive concrete vault to ship human remains by commercial aircraft. It goes without saying, that a concrete vault is heavy and it would increase the air freight charge. We actually had a case like that.

A surviving wife was told an expensive—\$2,500—wood casket was required for cremation of her husband's remains. She was told a wooden casket would be required.

A funeral director charged consumers more for cash advance items—ambulance transportation and newspaper notices—than he was billed for such items.

A funeral director misrepresented to a surviving relative in another State that a county indigent funeral only consists of throwing the naked body of the deceased in a hole, in an effort to sell her full funeral service. We consider that a deceptive practice in Arizona.

A funeral director displayed caskets in a deceptive manner by displaying only expensive—\$2,000 to \$4,000—caskets in the main display room, and displaying only to certain persons two to four less expensive caskets in a dimly lighted smaller room and not displaying inexpensive alternative containers. A person might not know about them.

A funeral director told a consumer that embalming was required by State law, but did not disclose that refrigeration was an alternative preservation technique and that direct burials did not require embalming.

A funeral home represented in advertisements that the consumer's price for prearranged funerals offered by the firm was "guaranteed," "locked in forever," and "fixed" without disclosing in the ads that funeral home's contract fine print specified that all accrued interest in the consumer's trust account, which was the consumer's property, also was to be applied to the purchase price. In long-term contracts accumulated interest may be double or triple the original specified purchase price because it may be 10, 15, 20, 25 years before performance on a contract.

Several funeral directors have not provided itemized prices or legal requirements information to consumers, contrary to State law.

Certain funeral directors have not provided consumers itemized contracts, contrary to State law.

Several funeral directors have not displayed to consumers inexpensive alternative containers available for sale.

Finally, certain funeral directors in Arizona, New Jersey, and other States have unconscionably price-gouged consumers in excess of 300 percent to 1,250 percent of the gross wholesale cost for caskets and containers.

Many of these abuses and violations are uncovered in the course of inspections and investigations as well as through consumer complaints.

What I am saying is to get into this area you have to look because, as I have already said, consumers simply are unaware of the transaction or where to file a complaint.

There is a definite need for the assistance and cooperation of the Federal Trade Commission in this area. State agencies would benefit greatly from the expeditious promulgation of Federal standards concerning price information disclosures and fair dealing as contained in the proposed FTC rule.

Let me talk about State resources and enforcement problems.

The Arizona attorney general and the Board of Funeral Directors and Embalmers have given high priority to consumer protection in this area. We believe they have a good investigative and enforcement program, but our resources are stretched to the limit.

We operate with only a part-time board, investigator and legal services.

Our aggressive effort cannot be sustained, without Federal cooperation and assistance.

We also have serious monetary constraints.

We have had resistance from certain industry members with respect to any changes in a positive direction.

A number of State enforcement efforts in this area in my opinion operate out of a shoebox in that their regulatory powers are limited by governing State laws which are often drafted by industry groups in various States.

Many State boards historically have been concerned with the quality of service complaints and competitor disputes, and generally have not perceived any consumer education or protection problem in the area of price disclosures and deceptive practices. Our experience in Arizona has been that the problem is there if you have the resources and make the effort to look.

There is a general lack of technical and other back-up assistance from Federal agencies to the States. In great part this is due to lengthy delay of the Federal role in this area, which FTC would furnish.

State and Federal agencies have greatly benefited from prior cooperative efforts.

We believe the establishment of Federal minimum standards would permit many States, such as Arizona, to concentrate limited regulatory resources on investigation and enforcement activities

and would permit us to build on such minimum standards as local consumer problems require.

A great need for uniform disclosure standards in this unique and sensitive area of grief transactions and for a Federal commitment to assist senior citizens in these unavoidable transactions exists. I would ask you to compare this with truth in lending. If there is a need for disclosure of credit costs there must be a need for disclosure in funeral transactions.

Finally, Arizona believes that State and local enforcement agencies should have a clearly defined enforcement role in assuring compliance in the respective States with the disclosure and fair dealing provisions of the Federal Trade Commission rule. We believe the proposed rule should be locally enforced in States which have ongoing aggressive enforcement programs.

FTC enforcement programs should be focused in States which do not have the capability or motivation to enforce the Federal standards.

State enforcement agencies are in a position to react quickly to consumer complaints and fine-tune enforcement to local conditions. [An attachment to Mr. Shattuck's report is a list of state consumer enforcement agencies.]

[An attachment to Mr. Sheets' prepared statement follows:]

Arizona State Board of Funeral Directors and Embalmers

1845 West Jefferson Phoenix, Arizona 85007

602-271-3095

October 10, 1979

The Honorable Eldon Rudd
1110 Longworth House Office Building
Washington, D. C. 20515

Re: Support of Federal Trade
Commission Funeral Industry Rule

Dear Congressman Rudd:

On September 25, 1979, a delegation of this Board met with representatives of the Federal Trade Commission concerning the progress of the proposed Commission rule on funeral services disclosure standards and also concerning common enforcement problems in this consumer protection area.

Subsequent to that very productive and informative meeting, this Board held a public meeting on October 9, at which the proposed federal rule was discussed and debated at length. As a result, it is now the consensus of the Board that the Federal Trade Commission should be permitted to promulgate its proposed funeral industry rule in the most expeditious manner feasible.

It is the Board's view that the promulgation of minimum federal standards of fair dealing in this area would greatly facilitate the Board's local enforcement efforts and more effectively protect Arizona consumers from deceptive practices. The following points are called to your attention:

1. Funeral services consumers are uniquely vulnerable to deceptive practices, in part due to their bereaved and depressed mental state and the general lack of public information concerning funeral arrangement transactions.

The Honorable Eldon Rudd
October 10, 1979
Page Two

2. Since the potential for consumer fraud in such "grief transactions" is very great, the demonstrated need exists for active and aggressive coordinated enforcement efforts by federal, state and local consumer fraud agencies in this area.

3. The establishment of minimum fair dealing standards in the funeral industry by the Federal Trade Commission, would not inhibit local consumer fraud enforcement but rather would permit local agencies (such as this Board) with limited financial resources to build from such standards and focus on local enforcement problems.

4. It is in the best interest of local consumer fraud enforcement agencies and the funeral industry that the proposed federal rule be finalized most expeditiously to facilitate early coordination of local legal requirements and enforcement programs with the minimum standards and to prevent "dragging out" the rule-making process with the resultant disruption and confusion to business.

In conclusion, the Board welcomes the anticipated assistance of the Federal Trade Commission in protecting funeral services consumers in Arizona, and strongly urges an early resolution of the present uncertainties concerning this vitally needed rule.

Sincerely,

ARIZONA STATE BOARD OF FUNERAL
DIRECTORS AND EMBALMERS

David L. Robinson
President
George Thomas
Secretary
John M. Ferguson
Marianne Luper
Raymond W. Hoff

Mr. ECKHARDT. Monsignor, you state that the Arizona State Funeral Directors Association has stonewalled the legislation. Could you give me a little more information as to how they have done that?

Monsignor O'KEEFFE. While the FTC proposal and rule was alive, before the Russo amendment, there was very good cooperation between the funeral directors, the State association, the State board in Arizona.

At the very moment the Russo amendment went through, the funeral directors saw that there now was an opportunity to come back in again and just stonewall everything they could in any progressive legislation.

This has hurt them in Arizona. We have good statutes but we need better ones. It is felt the FTC proposal is dead and it will be business as usual.

Mr. ECKHARDT. You also state, concerning industry members who have cooperated, that they have done so at great anguish to themselves and families. Can you enlarge on that a bit?

Monsignor O'KEEFFE. We have board members who have had the fortitude and character to endorse the FTC proposal. I think you have a letter we sent to a number of Congressmen and Senators. The soul searching and problems and pressure they received from their members of their industry was very great.

We know from the different situations we faced they have to take a different view. They have done so.

Before 1975, the Arizona State Funeral Board was an adjunct of another agency. The organization was working at the behest of the State Funeral Directors Association. It is not now, however.

Mr. ECKHARDT. You say that 90 percent of the funds supporting the board came from the industry and 10 percent from the general fund?

Monsignor O'KEEFFE. Yes.

Mr. ECKHARDT. How many funeral directors are on the board?

Monsignor O'KEEFFE. Four funeral directors and two lay members.

Mr. ECKHARDT. Have you been the object of any intimidation?

Monsignor O'KEEFFE. Yes, in 1975. When I first became a member of the Arizona State Funeral Board, December 7, 1975, I picked up my telephone at 2 a.m. and was asked what kind of embalming fluid I would like. That harassment continued until 1978. I have reported it to the proper authorities. Proper authorities are aware of it and are investigating it.

Mr. ECKHARDT. On about how many occasions?

Monsignor O'KEEFFE. Five different occasions.

Mr. ECKHARDT. You are not able to identify who the caller was?

Monsignor O'KEEFFE. I think in one instance we know where it came from. In another instance we have pretty good circumstantial evidence.

Two members of the Arizona State Commission went to my bishop. I did not know it. My bishop is a very honorable and forthright man. He told me about it. He said they needed me moved from the board because of my activities.

His reply to those two members was that if I had any malfeasance in office they should go to the attorney general's office or the Governor of the State. The matter ended there.

Mr. ECKHARDT. Did the investigations identify anyone connected with the funeral industry?

Monsignor O'KEEFFE. I have not pursued all of the matters. I left that in the hands of the Department of Justice and the FBI.

Mr. ECKHARDT. You do not know the source of the calls?

Monsignor O'KEEFFE. No.

Mr. ECKHARDT. You know they commenced with your active participation in the area of funeral service investigations?

Monsignor O'KEEFFE. Yes.

Mr. ECKHARDT. About how many complaints do you receive each year?

Monsignor O'KEEFFE. An average of three to five complaints a year. Since 1975, since lay participation, we were authorized to have inspections. For 2 years we completed inspection of 106 funeral establishments.

This year alone, with the completion of 30 inspections, we have unearthed 60 different violations in funeral homes.

Mr. ECKHARDT. Has there been a difference in magnitude of complaints since the board became active?

Monsignor O'KEEFFE. From zero in 1975 to an average of 30 to 35 a year.

Mr. ECKHARDT. To what do you attribute that increased number?

Monsignor O'KEEFFE. The news media. We have a wonderful news media in Arizona. They believe in open meeting laws, consumer education, awareness of the public, and willingness of the public to come forward.

Mr. ECKHARDT. These four problems you described in your testimony would generally describe the nature of the complaints?

Monsignor O'KEEFFE. Very much so.

Mr. ECKHARDT. Is any one of those predominant over the others?

Monsignor O'KEEFFE. Lack of price disclosure is one of the greatest.

Mr. ECKHARDT. Have you followed up complaints with investigations to determine whether or not complaints are soundly or not soundly based?

Monsignor O'KEEFFE. Yes. We have taken good action in Arizona, especially in one case, inadequate embalming of an Indian child. We took severe action against the embalmer and funeral director. We revoked and suspended the licenses.

Mr. GORE. Please proceed with your response.

Monsignor O'KEEFFE. I think we completed that particular point.

Mr. GORE. Your board endorsed the FTC rules?

Monsignor O'KEEFFE. Yes.

Mr. GORE. Why did you do so?

Monsignor O'KEEFFE. We felt we needed the basic tenets of the proposed rules if we were to be successful in fighting some of the abuses that had happened. We don't have all the resources.

Mr. GORE. Are you aware of any situations where a person offering a cheap funeral was offered money by a competitor to close down his funeral home?

Monsignor O'KEEFFE. I do not understand the question.

Mr. GORE. Are you aware of any situation where a person who was offering a cheap funeral was himself offered money by a competitor if he would close down his operation?

Monsignor O'KEEFFE. Yes, I am aware of that situation in Yuma, Ariz., in my hometown.

Mr. GORE. Could you supply that?

Monsignor O'KEEFFE. Mr. Sam Nasel came out of California and set up a very low-priced operation in Yuma, Ariz. The most expensive funeral was \$500.

As a result of his operation, extreme pressure came from the other funeral establishments in Yuma and he called me one day and related that he was offered \$15,000 for his establishment just to close up and get out of town.

Subsequently, because of the pressure and because of the fact that he cut his price completely, they turned the public against him and he went out of business.

Mr. GORE. If I ask a question which already has been asked, do not feel compelled to cover the whole ground, but it seems to me that you have had unique training, Monsignor, in dealing with the people under circumstances where they are bereaved.

Can you in simple words describe why it is you believe that a person in that condition is not fully capable of shopping around and why that person would be uniquely vulnerable to sophisticated sales techniques? Why would that be?

Monsignor O'KEEFFE. Whether you expect death or not, the very moment it strikes is probably one of the most traumatic areas of a person's life.

As a result of that trauma, a person, because of the emotion and other psychological factors, is not going to react normally. They are listening to friends and relatives, and they are in such a state it is not possible to go in and face contractual and other realities.

When you are entering into a contract such as a funeral, this is reality, cold and hard facts. The fact that perhaps a widow is shown a casket may just have a terrible effect on a person like that. A person may go to pieces.

Here again, the entire emotional and traumatic experience is replayed over. This may continue for days and even weeks and months.

That is the best way I can describe it. People are not themselves at that time.

Mr. GORE. So when they are in that condition, if they ask for a list of prices they ought to be given a list of prices. Is that right?

Monsignor O'KEEFFE. Certainly. The other thing is that they can trust their clergymen, trust their attorney, and their funeral directors. Now it is limited. They can be led easily at that time.

Mr. GORE. Mr. Sheets, you listed in your testimony some other factors that you believe are uniquely present in this situation where a person is confronted with a hard, cold reality of paying for a funeral. What are some of the other factors present here?

Mr. SHEETS. I think Monsignor O'Keeffe hit on the most important.

Mr. GORE. You say it is a unique, nonelective, one-shot transaction unlike other commercial transactions. I do not follow that.

Mr. SHEETS. Let me run through that. It is not elective in that you have no choice.

Mr. GORE. Why do you have no choice?

Mr. SHEETS. Someone died. You have to enter into a transaction during a moment of grief, and you are not thinking clearly.

Mr. GORE. And you have to purchase a funeral package.

Mr. SHEETS. You have to do something with the remains of your loved one. That is an obvious nonelective situation.

Mr. GORE. Experience shows that bereaved families are not going to remove the body to another funeral home. They will not go shopping around. They are faced with a decision they must make. They must purchase a funeral package and for all intents and practical purposes they are going to make the transaction at the place where they first arrived. Is that correct?

Mr. SHEETS. They will go to a place of business. Most likely it will be a place of business that is convenient.

In Arizona some small towns have only one or two funeral establishments, so that obviously limits the availability or the options as far as where you can go.

Mr. GORE. You say your State has gone further than the proposal made by the Federal Trade Commission by a long shot, but you think that still the Federal Trade Commission proposal would be, or would have been, an extremely useful one because you see this is a unique opportunity for State and Federal cooperation.

Mr. SHEETS. We see the Federal rules as being a basic framework of fair dealing where the States build on that basic framework according to what we need at the local level. We see the FTC rules as being absolutely necessary as a minimum.

Mr. GORE. Did you want to make a comment?

Monsignor O'KEEFFE. You are bringing it back to the people. Where will it end? Basically there is a tenet about the Constitution coming back to the people. We still would have a right to come before you and express our concerns if that rule is not working.

Right now if we get a closed shop in the States, we are in trouble.

Mr. GORE. I recognize counsel.

Mr. KINZLER. Mr. Sheets, are we really dealing with two problems here? First is that the laws themselves may not provide adequate remedies. For example, if the FTC funeral rule goes into place, but only the FTC can enforce it, we have little impact because of the Commission's limited resources. Is that right?

Mr. SHEETS. That is right.

Mr. KINZLER. There is no way they can go after every single case or anything close to that.

Mr. SHEETS. In my conversations with the FTC they made it clear they would have limited resources and they would have to rely on the State for enforcement of this rule by necessity.

Mr. KINZLER. Would you favor giving enforcement authority either to individuals who have been injured by violations of the FTC rules and also to State attorneys general offices?

Mr. SHEETS. State attorneys general offices should have enforcement responsibilities in this area, obviously.

Mr. KINZLER. The second part of this problem is that there may be insufficient funding for State enforcement of its laws or Federal laws.

Mr. SHEETS. There is a terrible problem in terms of funding. If I may back up.

Mr. KINZLER. Yes.

Mr. SHEETS. You mentioned options were enforcement sanctions which are limited.

In Arizona and most other States the only sanctions imposed usually are to do nothing or take away their ability to do business. The latter is a very drastic action. If the boards had ability to impose civil penalties it would help. There is a lack of having a medium-range enforcement sanction.

Mr. KINZLER. You both talked about the question of funding for the board, the funeral board, and that there were next to no resources available. What is the level of funding to the board and what kinds of resources does it support?

Monsignor O'KEEFFE. \$23,000 is the annual budget. That is for the whole year. Hopefully we are pretty good managers and will be able to get in at least one formal investigation. Then, if we have a good expert legal counsel we may be able to take some action, cease-and-desist orders, against some of the violators.

Twenty-three thousand dollars is all we have. We have a case going on now which costs several thousand dollars. That one case made a tremendous dent in our budget. I doubt we can handle more than two or three cases of that nature.

Mr. KINZLER. Does that \$23,000 include travel expenses for you and other board members?

Monsignor O'KEEFFE. The per diem comes from the States. Travel expenses come from the \$23,000.

If you take Yuma, it is \$91 round trip by air, over 200 miles from the State capital. If we have two members in the Phoenix area the travel expenses are great.

Mr. KINZLER. Are there full-time or part-time employees on the board?

Monsignor O'KEEFFE. We have one full-time staff person but she shares time with seven other boards.

Mr. KINZLER. Thank you.

Mr. GORE. They are fortunate they chose someone with an inexpensive lifestyle.

Monsignor O'KEEFFE. That is one of the good problems.

Mr. GORE. I recognize counsel for the minority.

Ms. WHITNEY. I have no questions.

Mr. GORE. Let me ask you one other question. This is such a sensitive area for so many reasons. The ritual involved here can be very important in easing the loss that a family has experienced. There has been criticism of some of the new cut-rate, if you will, economy funerals. Some of the criticisms seek to imply or state that the family will be deprived of this important healing ritual. I am sure you have had thoughts about that. Can you share them with us?

Monsignor O'KEEFFE. Yes. I know what I have done. I probably was not as sensitive before I went on the board. Since I have been

on the board I have taken a whole new perspective as to how to treat a family.

Your total question involves a pluralistic society. Being a State board member you have to look at the pluralistic makeup of America. We have to have alternatives. There are church to nonchurch, traditional and nontraditional. We will have to meet the needs of all those people. People want that type of a service and we will have to meet those needs.

There is a division as to what services they should and should not have. The State should not get into what types of service they want. I know where I stand but as a board member I sit there and look at the statute and look at what people want. People want it, if it is only five people, and the State laws must meet the needs of those five people.

Mr. GORE. We need alternatives. Do you see any necessary conflict between dignity in a service and sensitivity and the costs of that service?

Monsignor O'KEEFE. Not really. I think the dignity always will be there. I think maybe it is a new perspective that people have on how this is done. Maybe they have a greater depth and feeling as to what life is and what the hereafter is. Maybe they have it better—well, I am not saying with all of the frills and all of the rest of it. A man wants a \$10,000 funeral. He is entitled to it.

A person wants a simple and dignified one. They are entitled to it.

Mr. GORE. In your testimony and in your service on the board you are not recommending a particular kind of funeral, nor are you saying that those who want a funeral that costs a lot of money should not have one. All you are saying is that those who perhaps may be unable to afford an expensive funeral ought to have alternatives available and those who are in a state of bereavement and shopping for a price they can afford ought to be able to get the information necessary to make an intelligent decision.

Monsignor O'KEEFE. That is correct, and with one other factor.

Mr. GORE. Yes.

Monsignor O'KEEFE. That they not be taken advantage of.

Mr. GORE. And practices used by the industry in selling these services and products should be fair?

Monsignor O'KEEFE. Absolutely.

Mr. GORE. On behalf of the subcommittee I would like to thank you both for your testimony. We have another vote on the floor. Chairman Eckhardt is on the way here. Before we call the next witness we will have about a 5-minute recess. He will be here momentarily.

[Brief recess.]

Mr. ECKHARDT. The next witness is Larry Pont.

Do you swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. PONT. I do.

Mr. ECKHARDT. Mr. Pont, you are here under subpoena. I understand, however, we are not imposing on your free will in testifying today.

You may proceed.

TESTIMONY OF LARRY PONT, PRODUCER, WLS-TV, OGDEN DUNES, IND.

Mr. PONT. I am Lawrence Pont. I am producer of prime time specials for WLS-TV. This is one of the stations owned by the American Broadcasting Co.

I do not have a statement but if you have questions I will be glad to answer them.

Mr. KINZLER. As I understand it, you produced a special 1-hour program which appeared in December of last year. Is that correct?

Mr. PONT. Yes.

Mr. KINZLER. Could you describe briefly for the committee what the nature of that special was, who the people interviewed were, and what were some of the experiences you ran across both in funeral homes and in dealing with some of the people who had to deal with you?

Mr. PONT. After seeing the FTC report I made a film—actually two films. One was an hour long and the other a half hour long. These involved 1 year of preliminary research and 1 year of production. The subject had been suggested by someone at the station. I was interested in doing it.

I was interested in doing this particularly because of a statement which was made by the FTC. They spoke of abuses of the funeral industry and said that these abuses are industrywide. They also said there are many serious abuses of consumers by large numbers of the Nation's 22,000 funeral homes.

It seemed to me that if that were true, then without a great deal of trouble I should be able to go out into Chicago, metropolitan population of 8 million people, and easily find examples of the abuses that the Federal Trade Commission suggested were going on. That was in fact true.

There was no difficulty, I found. Over a 1-year period of time I found every abuse listed.

Mr. KINZLER. Can you specify some of those abuses? I think allegations range from failure to give price information to stating that State law requires embalming when it does not.

Were those the kinds of things you discovered?

Mr. PONT. Yes. Having found them everywhere, my next problem was simply a production problem. I didn't want to go out and interview 100 people on camera. Therefore, I chose three who exemplified most of the abuses.

One was a woman who had two small children. Another was Mr. Dishman who lost his mother-in-law. The third was a Mr. Segal, who arranged two funerals.

Let me tell you what I found, for example, and showed in the documentary of Mr. Dishman. Mr. Dishman's mother-in-law died in Chicago unexpectedly on a visit. She was from North Dakota. Mr. Dishman took the body to the funeral home and signed to have a complete funeral.

Meanwhile his father-in-law said, "I don't want a complete funeral. I want the body shipped back to North Dakota." The funeral parlor had only embalmed the body.

To make a long story short, Mr. Dishman was charged for a complete funeral in Chicago although all he received was embalming, and the body was sent to North Dakota. He also paid for a

complete funeral in North Dakota. Understandably he was angry. That is one example.

Another example was the widow, Mrs. Ulrich. Mrs. Ulrich's husband was a truckdriver—an 18-wheel gasoline truck. It was filled with 80,000 gallons of gasoline. One night on the way home he had an accident and the truck blew up and burned on the highway for 6 hours. It burned the highway down to the ground.

There was so little left of the body that the police officers thought he jumped clear. When I say "so little left" you could put it in an ashtray.

Mrs. Ulrich didn't know that. The funeral parlor took the "body."

She was charged for a steel casket, embalming and cosmetology. Understandably she was also upset.

The third victim, Mr. Segal, arranged one funeral and felt that he had been taken on a number of abuses listed in here. He studied the issue and knew the laws and arranged a second funeral, but was totally unable to avoid any of the abuses the second time as well.

Those three, although there are other victims, occupy the core of the victim story in the 1 hour.

Along with them I had interviews with a member of the State board of examiners, various funeral directors, legislators in the States of Illinois and Indiana, as well as a former funeral director from California who wrote a book exposing the funeral industry.

I think I can speak about those people that I interviewed and about the city of Chicago, about legislation in the State of Indiana and the State of Illinois, and in general about the situation in California.

Mr. KINZLER. How did you find these people who felt they were victimized by funeral homes? Did you go to funeral home records? How did you find them?

Mr. PONT. I did it a couple ways. One way, since the FTC already had been investigating this for 4 years, was through the FTC. They had a number of names. I went through perhaps a 1-foot-tall pile of testimony and letters by consumers who felt they had been abused in Chicago.

Another way was writing to various organizations who had testified at the FTC, asking them for names of people in Indiana or Illinois.

The final way was to approach the State board of examiners in the State of Illinois and try to get hold of all of the people who had complained to the State board, a total of some 65 people.

I understand it is a State law that those names have to be revealed but they were not revealed and I was unable to get them.

Mr. ECKHARDT. In your film, did a member of the Illinois Funeral Board state there had been no complaints raised before the board?

Mr. PONT. While he was there? Yes; he did.

Mr. ECKHARDT. What was his period of time with the board?

Mr. PONT. He said he had been there the last year and a half.

Mr. ECKHARDT. That was during what years?

Mr. PONT. 1978-79. I had asked him that question because I already knew the answer. I had already checked with the department of registration and information in Illinois to find out how

many complaints had been made to the State board of examiners in the past 2 years. There had been 65 complaints.

I might add of those 65 that 63 were dismissed by the State board as groundless.

Mr. ECKHARDT. Do you know the nature of those complaints?

Mr. PONT. I was unable to pursue it further. They wouldn't give me the records. They wouldn't tell me who the people were.

Mr. ECKHARDT. The State board refused to give you the names of people?

Mr. PONT. Yes.

Mr. ECKHARDT. How did you find out that 63 of the complaints had been found groundless?

Mr. PONT. By previously calling the department of registration and information. They gave me that information over the telephone.

Subsequently, when I spoke to the Illinois State lobbyist and a funeral director on camera they did, in fact, admit that was true. Therefore, I had verification from the funeral director and the lobbyist.

Mr. ECKHARDT. They did admit there had been these 65 complaints?

Mr. PONT. Sixty-three dismissed.

Mr. ECKHARDT. What is the makeup of the Illinois board?

Mr. PONT. They are all funeral directors.

Mr. ECKHARDT. All?

Mr. PONT. One is, in addition, the coroner.

Mr. ECKHARDT. Is there also a funeral association of some type in Illinois?

Mr. PONT. Yes, their title being the Illinois Funeral Directors Association.

I also interviewed the Illinois lobbyist for them. His name escapes me for the moment. He is also on camera.

Mr. ECKHARDT. Is there any connection that you know of between the association and the board?

Mr. PONT. Obviously there would have to be. One of the board members I interviewed is a Mr. Chasin, who was also on the Illinois Funeral Directors Association, so there must be a connection. I didn't pursue that. It seemed to me obvious.

Mr. ECKHARDT. Who pays the board?

Mr. PONT. I don't know.

Mr. ECKHARDT. You don't know whether they are salaried—State salaried—or whether they work free, or whether they receive remuneration for time expended on the job? You don't know from whom?

Mr. PONT. No; I do not.

Mr. ECKHARDT. Did you investigate the question of the cost and the price of steel caskets, also the question of whether or not steel caskets sealed had any effect on preservation of the remains?

Mr. PONT. Yes; I did.

Mr. ECKHARDT. Can you tell us what you found?

Mr. PONT. The pricing of caskets was my interest. I was interested in finding out the markup. I had been told on camera by one funeral director the profit in the casket. Two others denied that. Therefore, I was interested in determining the markup.

I was told by Mr. Rhodemeyer, of the FTC, that their findings were that it was between 200 and 300 percent.

I was told by the lobbyist for the Illinois Funeral Directors that it was 100 percent.

One of the funeral homes I visited—there we wrote down the name of the manufacturer and the price of a copper casket and then found what the price was as sold by the manufacturer and we could therefore find out what the markup was. That particular casket was marked up 350 percent.

We found what the situation was with sealers as well. Sealers are an obvious scam. It is an obvious deception of the public. I don't know how they get away with it. A sealer is a glue which goes around a casket or vault so when you close it, it is airtight.

The literature of the industry, which I show in the film, suggests that this is done for permanence, and they use the word "the elements." They say, "You wouldn't want the elements to get in." This means that the person you love is getting water, dirt, and bugs. They say this prevents that.

Also it is very expensive. For example, if you take a grave liner, which is required by some cemeteries, it costs \$57. A vault, however, can cost several thousand and more when you put a sealer on it. The situation is similar with a casket. At any rate the hitch is that it assures permanence.

The former funeral director in California pointed out that that is not the case at all. It is a lie. Bacteria which produces deterioration in the body are indeed carried in the air. However, there are faster bacteria to more quickly destroy the human body which are aneroidic, so if you seal off the casket and pay several thousand dollars more to protect the loved one from decay you are in fact producing faster deterioration of the body. I got a funeral director to admit that. I enjoyed that part.

I asked, "Are you aware that the body deteriorates faster when you seal the casket?" He shook his head yes. I said, "Then why the pitch?" He didn't answer.

Mr. ECKHARDT: Have you had any action taken against you since you commenced your investigation of this area?

Mr. PONT: Action by whom?

Mr. ECKHARDT: Pressures or things of that nature? Has there been any manner of harassment?

Mr. PONT: Yes, from one funeral director who called and said that if he came out bad in this documentary that I was in trouble. I didn't take that very seriously.

The funeral lobbying is very strong. It is puzzling to me how they can be so strong.

After I showed the program they showed a strong letter to the program manager which I saw. He understood we should expect that. A similar letter was written to the station manager.

The show was sponsored in full by Xerox Corp. They received a letter denouncing us, me in particular. Of course I received letters from funeral directors who had participated in the film charging me with yellow journalism, which I took as a compliment considering the source.

Mr. ECKHARDT: Mr. Gore?

Mr. GORE: Thank you, Mr. Chairman.

Mr. ECKHARDT. I would like to compliment you on the work you have done. I think it is interesting that both of the journalists who have appeared at this hearing took as their starting point the work of the FTC. That is where you got a lot of the information that you really began with.

Mr. PONT. That is right.

Mr. GORE. I would like to follow up on the last line of questioning by the chairman. He has covered the ground rather thoroughly, so I shall be brief.

Which funeral director called you up and said you would be in trouble if you didn't look good?

Mr. PONT. His name was Mr. Cage.

Mr. GORE. What was the name of that funeral home?

Mr. PONT. Universal Memorial Chapel.

Mr. GORE. Xerox did buy you in spite of that? They didn't flinch at supporting the program?

Mr. PONT. Not to my knowledge.

Mr. GORE. What about the station itself? They did buy it?

Mr. PONT. Yes; there is an issue involved there. The station, I think, showed considerable courage in producing a documentary on a subject that is that controversial. The station, on the other hand, I believe, has a policy that my function as producer is not to tell the public what to think or what legislation is needed and by whom. My function more rightly is to present the facts as well as I can and let the people whose job that is determine what action is necessary.

I believe the reason I was required to have a subpoena was because were it done any other way, had I come here voluntarily, it would imply that the American Broadcasting Co. or my station is in favor of FTC regulation and wants it. Their position is that they should neither say they want it nor that they do not want it. They should present the facts.

Mr. GORE. That is interesting. Do you feel uncomfortable pursuing this?

Mr. PONT. No.

Mr. GORE. I would like to ask more questions on it, then. I testified once when I was a journalist before a committee of the Congress. The newspaper involved was delighted with the fact that one of their reporters was asked to contribute to a proceeding. Yet you have encountered some reluctance, I take it, for you to participate. I am wondering whether there is a feeling on the part of management that this regulation ought not to be approved. Do you get that feeling?

You tell me when it starts to get uncomfortable if it did not get that way before.

Mr. PONT. Sir, you are asking me what the station manager's position is on the funeral regulation.

Mr. GORE. Yes.

Mr. PONT. You would have to ask him.

Mr. GORE. Since your profession is asking questions I guess I should not be surprised that you are good at answering them. Has there been a change in management?

Mr. PONT. Yes; there has been a change in management. The first half year I was not at the station but was employed by the station as a contract producer under a different manager.

The next year was similarly under the same different manager. Once it was completed we now have a new station manager.

Mr. GORE. And there is a different atmosphere?

You do not have to respond to that. I don't want to put you on the spot. I am interested in these types of issues. I think the first amendment protects individual reporters, too. I think whatever the views of the management of your station, they are awfully lucky to have you and your expertise and your diligence and the kind of reporting you have demonstrated in this series. They should be delighted to have you testify here because you have made an excellent contribution.

I congratulate you for it.

Mr. PONT. Thank you.

Mr. ECKHARDT. Thank you very much for your appearance and your testimony.

Mr. John Esposito.

Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ESPOSITO. I do.

Mr. ECKHARDT. You may proceed.

TESTIMONY OF JOHN ESPOSITO, SPECIAL COUNSEL, NEW YORK STATE CONSUMER PROTECTION BOARD

Mr. ESPOSITO. My name is John Esposito. I am special counsel for the New York State Consumer Protection Board. I am appearing here on behalf of Mrs. Pooler, our executive director, who asked me to convey her regrets. It was a last minute personal matter which prevented her being here.

I appreciate this opportunity to discuss the continuing need for disclosure of the prices of goods and services offered by funeral directors.

The committee is no doubt aware of the general position of consumer advocates on this issue. The vulnerability of consumers at the time funeral arrangements are made, the anxiety generated by the subject of death, and the wide variation in costs and arrangements—all of these factors combine to make this very sizable and delicate purchase a preeminent subject for price disclosure.

The Federal Trade Commission, after exhaustive documentation, developed a rule that was responsive to this point of view. The rule mandates price disclosure and attempts to deter misrepresentations concerning goods, services, or the legal requirements for burial and cremation.

The rule would not be an unwelcome intrusion upon any consumers. The bereaved whose sorrow is compounded by the financial burdens of funeral arrangements would be the beneficiaries of the rule, which provides the immediate opportunity for price comparison and which might in the longer run increase price competition. On the other hand, those who are not concerned about cost would not be affected by the rule. Choices would not be foisted upon or kept from them.

There is a need for comparable price information. Just last week, on February 7 and 8, the New York State Consumer Protection Board conducted a telephone survey of prices quoted by 84 funeral directors around the State. Our researchers asked for the lowest priced funeral available to someone who wanted the director to provide the following: removal of the deceased from a local hospital or nursing home, 1 day of viewing, embalming, and necessary care, paperwork, a hearse to the cemetery, and the lowest price casket. Responses varied widely.

Of the 59 establishments in the New York City area—the 5 boroughs and Nassau County—11 gave no information or incomplete information over the telephone. Of the 48 that gave complete responses, 24 quoted prices under \$1,090, and 24 quoted prices above that figure. The range of prices quoted for the same goods and services was from a low of \$505, to a high of \$1,800.

These 59 establishments were called because they, along with one which has since gone out of business, were the subjects of a similar survey conducted by the New York Public Interest Research Group 6 years ago, in early 1974. At that time, only 34 establishments provided complete answers to similar telephone inquiries. Of the 34, 17 had quoted a price of \$730 or less and 17 were above \$730. The range of price quotes was between \$450 and \$1100.

When prices for the lowest priced caskets available were quoted separately by New York City area funeral directors, the majority of quotations fell within the \$200-\$300 range, but we did get several quotations as low as \$95, and one as high as \$600.

The survey of upstate cities yielded similarly wide variations in price quotations. The results of the survey are appended to this testimony. [See p. 75.]

I have been careful to refer to "quoted prices" for a very modest funeral rather than to "prices charged." That is because the reliability of the figures is limited by a number of factors, the most important being the nonbinding nature of the quotations and the fact that our researchers knew enough about the business to ask specific questions designed to define a low-priced funeral.

I have no doubt that the average price of funerals is much higher because of the failure of consumers to know what are the necessities and what are the frills, and because many funerals include more arrangements than our hypothetical situation. Therefore, the figures tend to represent minimums which are only as reliable as the individuals we spoke with, what they understood our questions to mean, and indeed our ability to ask the right questions. This is a perilous course to expect the average consumer, during one of the most vulnerable times in his or her life, to negotiate alone.

Our strong support for mandatory disclosure of comparable price information should not be understood to imply that the choice of funeral arrangements should, in every case, be reduced to a matter of cost. Many funeral directors provide services that cannot be reduced to dollars and cents. But the cost of these intangibles may come at a very high price if there is no competition.

It is not because it would have unwanted effects upon consumers that the rule is in trouble. It is because it threatens to introduce the free flow of binding, comparable information, one of the essen-

tial bases of a competitive system, into the funeral industry that the FTC rule is in jeopardy, if not ready to be interred.

I think that the House's limitation on the Commission's ability to promulgate funeral industry rules is a disservice to consumers, and I would urge both the House and Senate conferees to bear in mind the continuing need for FTC action in this area.

[Testimony resumes on p. 86.]

[The survey referred to follows:]

[illegible]

BASIC SERVICES INCLUDE

<u>Name & Phone #</u>	<u>Location</u>	<u>Removal Body</u>	<u>Min. Viewing 1 Day</u>	<u>Hearse to Cemetery</u>	<u>Embalming</u>	<u>Other</u>	<u>Total Charges</u>	<u>Casket Price</u>	<u>Grand Total</u>
Aarons, Morris & Son	Brooklyn	X	X	\$100 Extra	X	X	\$345	\$235	\$ 880
Abbey Funeral Directors	Manhattan	\$95	\$100	\$100 Extra	\$225	\$359 super- vision \$ 30 permit	\$915	\$395	\$1340
Agarano, Peter B. "Call back later"	Queens							\$130	
Baverstock, Arthur & Son	Brooklyn	X	X	X	X	X	X	Included in price	\$1200
Bedell, J. W.	Staten Island	X	X	\$115 Extra	\$20 Extra (hair done)	\$ 10 extra forma	\$760	\$230	\$1135
Benny Funeral Home	Syosset	X	X	X	X	X	\$870	\$256	\$1126
Benson Funeral Services over "no prices over the phone"	Jamaica								
Benta's Funeral Home	Manhattan	X	X	X	X	X	\$1074	\$295	\$1369
Bible Funeral Home	Manhattan	\$60	\$275 Extra	\$ 99 Extra	\$200 direction \$125 embalming \$ 25 prep	X	\$ 425	\$250	\$1049
Blizinski Funeral Home	Brooklyn	X	X	X	X	X	\$700	\$200	\$ 900

* X denotes included in total charge

BASIC SERVICES INCLUDE

Name & Phone #	Location	Removal Body	Min. Viewing 1 Day	Hearse to Cemetery	Embalming	Other	Total Charges	Casket Price	Grand Total
Botti, Joseph	Bronx	*X	X	X	X	X	\$ 650	\$375	\$1025
Brett Schneider Funeral Home	All boroughs except SI	X	X	X	X	X	\$1200	\$200	\$1400
Campbell, Frank E.	Manhattan	\$95	\$100	\$100	\$100	\$ 50 prep \$ 30 sanitary \$395 super- vision	\$ 875	\$395	\$1270
Carman Funeral Home	Lawrence							\$150	
"can only give informa- tion to next of kin"									
Castle Hill Funeral Home	Bronx	\$75	\$200	\$ 96	\$215	\$200 super- vision	\$786	\$231	\$1017
Chapel Hill Memorial Home	Manhattan	X	X	\$100 Extra	X	X	\$695	Included in grand total	\$ 795
Clayton & Forbell	Rockville Ctr.	X	X	X	X	X	\$1000	\$275	\$1275
Cobblehill Chapels	Brooklyn	X	X	X	X	X	X	Included in grand total	\$1700
Cook, Glen B.	Syosset	\$40	\$100	\$ 55	\$ 75	X	\$ 270	\$285	\$ 555
Cooke, Walter B.	Manhattan	X	X	X	X	X	X	Included in grand total	\$ 949.03

* X denotes included in total charge

BASIC SERVICES INCLUDE

<u>Name & Phone #</u>	<u>Location</u>	<u>Removal Body</u>	<u>Min. Viewing 1 Day</u>	<u>Hearse to Cemetery</u>	<u>Embalming</u>	<u>Other</u>	<u>Total Charges</u>	<u>Casket Price</u>	<u>Grand Total</u>
Crestwood Memorial Chapel	Manhattan	*X	X	X	X	X	X	included in grand total	\$ 505
D'Andrea Brothers Funeral Home	Amityville	X	X	X	X	X	\$ 939	\$200	\$1139
Dillard, Emma & Son "no prices over the phone"	Brooklyn								
D'Amicelli & Sons "met their policy to give their service prices over the phone"	All boroughs							\$350	
Dorrel, John & Sons	Bronx	\$ 75	\$300	\$100	\$125	\$ 25 prep room \$325 super- vision	\$ 950	\$399	\$1349
Dotsen Funeral Home "Figure on at least a thousand... could include casket"	Brooklyn							\$265	
Dupont-Darnstedt Funeral Home	Queens	X	X	X	X	X	\$650	\$150	\$ 800
Flinch & Burns	Lynbrook	X	X	X	X	X	\$1375	\$425	\$1800

* X denotes included in total charge

BASIC SERVICES INCLUDE

Name & Phone #	Location	Removal Body	Min. Viewing 1 Day	Hearse to Cemetery	Embalming	Other	Total Charges	Casket Prices	Grand Total
Fogarty Funeral Home	Queens	*X	X	X	X	X	\$1083	\$230	\$1113
Fulton, Chester & Son	Freeport	X	X	X	X	X	\$ 800	\$400	\$1200
Gaasbye, J.C. Funeral Home Director said, "It is unethical to give prices over the phone"	Inwood	X	X	X	X	X	\$ 589	\$400	\$ 989
Garlick, J.C.	Brooklyn, Bronx	X	X	X	X	X	\$1175	\$145	\$1320
Guterman's "No prices over the phone"	Brooklyn, Bronx								
Hallet, Howard "No prices over the phone"	Queens								
Healy, J.J. Funeral Home	Brooklyn	X	X	X	X	X	\$1209	\$335	\$1544
Hempstead Funeral Home	Hempstead	X	X	X	X	X	\$ 795	\$252	\$1047
Mirch & Sons Iberia Funeral Services "No prices over the phone"	All boroughs Queens	X	X	X	X	X	\$ 900	\$200	\$1100

* X denotes included in total charge

BASIC SERVICES INCLUDE

Name & Phone #	Location	Removal Body	Min. Viewing 1 Day	Hearse to Cemetery	Embalming	Other	Total Charges	Casket Prices	Grand Total
Jamie, E.D.	Manhattan, Queens	X	X	X	X	X	\$1080	\$250	\$1330
Jordan, David H.	Manhattan	X	X	X	X	X	\$450	\$350	\$800
Kash Funeral Home	Queens	\$100	\$250	\$110	\$135	\$250 super-vision	\$845	\$500	\$1245
Lucia Brothers Funeral Home	Bronx	X	X	\$113 Extra	X	X	\$725	\$295	\$1020
Margano Funeral Home	Deer Park							\$600	
"It's impossible to give the prices over the phone. There are too many factors involved"									
McClister	Queens								
Morrell Funeral Home	Inwood	\$80	\$150	\$90	\$150	\$250 super-vision	\$720	\$250	\$970
Morris, Y. J.	Brooklyn, Hempstead	X	X	X	X	X	\$800	\$95	\$895
Parish West Memorial Chapel	Manhattan	X	X	\$90 Extra	X	X	\$880	\$95	\$975
Powell & Liebman	Amityville	X	X	X	\$135	X	\$800	\$217	\$1017
Quinn, T.M. & Son	Brooklyn, Queens	\$65	\$175	\$107	\$125	\$245 super-vision \$2.50 extra	\$609.50	\$300	\$909.50

*% denotes included in total charge

BASIC SERVICES INCLUDE

Name & Phone #	Location	Removal Body	Min. Viewing 1 Day	Marriage to Cemetery	Embalming	Other	Total Charges	Casket Price	Grand Total
Reynolds, T.J.	Queens	\$60	\$160	\$120	\$140	\$275 super-vision	\$645	\$395	\$1090
Richmond Funeral Home	Staten Island	\$75	X	\$150 Extra	X	X	\$300	\$285	\$ 685
Riverdale Memorial Chapel	Brooklyn, Bronx	\$90	X	X	\$ 60 \$ 90 prep work	\$375 super-vision	\$750	\$250	\$ 980
Ruggiero, F. & Sons	Bronx	X	X	X	X	X	\$1000	\$150	\$1150
Smith Funeral Home	Manhattan	X	X	\$ 75 Extra	X	X	\$ 390	\$350	\$ 815
Tart, J. Funeral Home	Brooklyn	\$65	X	\$ 90	X	X	\$ 480	\$250	\$ 730
Urban Funeral Home	Queens	\$75	\$280	\$116	\$150	\$300 super-vision	\$ 921	\$300	\$1221
Wells, L. & Sons	All boroughs	X	X	X	X	X	\$ 880	\$ 95	\$ 975
Wysoff Funeral Home	Brooklyn	X	X	X	X	X	\$1000	\$245	\$1245
Zion Memorial Chapel	Brooklyn, Bronx	\$90	\$285	\$118	\$ 85	\$275 super-vision	\$ 853	\$275	\$1128

*X denotes included in total charge

BASIC SERVICES INCLUDE

<u>Name & Phone #</u>	<u>Location</u>	<u>Removal Body</u>	<u>Min. Viewing 1 day</u>	<u>Hearse to Cemetery</u>	<u>Embalming +</u>	<u>Other</u>	<u>Total Charges</u>	<u>Casket Price</u>	<u>Grand Total</u>
Dietrich Funeral Home, Inc. 839-2818	Buffalo	\$45	\$145	\$70	\$130	\$250 ar- rangements & supervision	\$640	\$206	\$846
Johnson & Wilkins Co. Inc. 884-1980	Buffalo	\$40	\$200	\$65	\$150	Preparation room \$25-ar- rangements & supervision \$250	\$750	\$325	\$1075
E.L. Brady & Son, Inc. Buffalo 863-1345	Buffalo					Professional Services	\$800	\$355	\$1155
Stick & Mast Funeral Home, Inc.	Buffalo								
Dolin Funeral Home, Inc. 834-8128	Buffalo	\$35	\$150	\$85 \$35 for eration wagon	\$95	\$150 arrange- ments & super- vision	\$515	\$200	\$715
Wochul Funeral Service 893-7625	Buffalo	\$50	\$125	\$75	\$100	\$195 Profes- sional Services	\$545	\$360	\$905
Orlowski Buchowski 893-9672	Buffalo	\$40	\$50	\$70	\$95	\$105 Prep. room & supervision	\$360	\$300	\$660

BASIC SERVICES INCLUDE

83

<u>Name & Phone #</u>	<u>Location</u>	<u>Removal Body</u>	<u>Min. Viewing 1 day</u>	<u>Hearse to Cemetery</u>	<u>Embalming +</u>	<u>Other</u>	<u>Total Charges</u>	<u>Casket Price</u>	<u>Grand Total</u>
Carter Funeral Home, Inc. 474-1427	Syracuse								
Walter Funeral Home, Inc. 437-2701	Syracuse					Includes Professional service	\$950	\$250	\$1200
Parone and Son, Inc. 422-1911	Syracuse								
Ferguson Funeral Home, Inc. 458-1970	M. Syracuse	\$50	\$275	\$65	\$130	\$37 Profes- sional work arrangements \$90 Preparation Room	\$985	\$295	\$1280
Fairchild and Mach, Inc. 475-5101	Syracuse	\$60	\$125	\$75	\$110	\$35 dressing & casketing \$60 Prep room	\$465	\$234	\$699
Pirro & Sons, Inc. 422-2417	Syracuse	\$40	\$95	\$60	\$95	\$195 arrange- ments & super- vision	\$485	\$150	\$635
Garfield Funeral Home, Inc.	Syracuse					Includes ar- rangements & supervision	\$1150	\$100	\$1250

<u>Name & Phone</u>	<u>Location</u>	<u>Services Provided</u>	<u>Minimum Cost</u>	<u>Least Expensive Casket</u>	<u>Total</u>
CAMPION Funeral Home 483-0095	Albany	Transfer, "necessary preparation", embalming, use of home for one day (added for hearse)	\$1,035	\$100-\$400	\$1,420 - \$1,520
Fred Dasher 434-0375	Albany	Transfer, preparation	(\$985)	\$300 for casket \$350 for outside vault	\$1,500 - \$1,600
Frederick Funeral Home 482-3669	Albany			\$130	
Hans Funeral Home	Albany		\$1,200	\$300	\$1,500
Harley & Son 482-1191	Albany	Basic services	\$1,200 - \$1,300	\$260	\$1,400 - \$1,500
Chicarella Funeral Home 483-6656	Albany			\$1,000	
Marshall Tebbutt's 489-4451	Albany	"Century Plan; viewing, preparation, casket, hearse, grave opening vault"	\$785	included in "Century Plan"	\$1,280
Zwick & Sons 463-2587	Albany	Basic "plus lot at cemetery" (\$250)	\$155 \$340		\$1,800

<u>Name & Phone</u>	<u>Location</u>	<u>Services Provided</u>	<u>Minimum Cost</u>	<u>Least Expensive Casket</u>	<u>Total</u>
Elwood T. Day 732-6091	Utica	Preparation; embalming, hearse, all services of house	\$900	\$200	\$1.29
Heintz 797-5552	Utica	All services; (preparation, em- balming, grave opening at Forest Hill)	\$925 (\$150)	\$240 (vault from \$250)	\$1.39 (with openi- ng) \$1.54
Quinn, Ryan & Hunn 797-1900	Utica	Basic services (removal, prepara- tion, one day viewing, embalming) (grave opening at Forest Hill)	\$850 (\$125)	\$495 (vault from \$220)	\$1.56 (with openi- ng) \$1.69
Williams 725-8718	Utica	Basic services (opening at Forest Hill)	\$750 (\$150)	\$300 (vault from \$250)	(with openi- ng) \$1.45

Mr. ECKHARDT. Is there any advertising in the funeral business in New York?

Mr. ESPOSITO. We have not seen any specific price advertising. We are aware of institutional advertising where there are some general claims made by low-priced funerals but not any which would cite specifically the price of the funeral.

Mr. ECKHARDT. Do you know how many funeral directors have been prosecuted for practicing fraud, deceit, or misrepresentation in recent years?

Mr. ESPOSITO. I do not have a specific figure. Frankly, the number would be very low, if measurable.

Mr. ECKHARDT. Do you know whether any have had their licenses revoked?

Mr. ESPOSITO. Again I would expect it has happened from time to time but it would be a very minimal figure. I would be happy to supply those figures for the record. Our agency does monitor the activities of other State agencies.

Mr. ECKHARDT. Without objection, the record will be left open to receive that.

[The following information was received for the record:]



State of New York
EXECUTIVE DEPARTMENT
STATE CONSUMER PROTECTION BOARD
Two World Trade Center - Room 8225
New York, New York 10047

ROSEMARY S. POOLER
Chairwoman and Executive Director

RECEIVED
MAR 3 1980
BOB ECKHARDT, MLC

February 28, 1980

Congressman Bob Eckhardt, Chairman
Subcommittee on Oversight and Investigations
of the Committee on Interstate & Foreign Commerce
Congress of the United States
House of Representatives
Washington, DC 20515

Dear Congressman Eckhardt:

At the hearing on funeral industry practices, on February 13, I promised to submit additional information for the record relating to the disciplinary process for funeral directors in New York State. The statistics provided me by the Funeral Bureau of the New York State Department of Health are as follows:

	<u>1977</u>	<u>1978</u>	<u>1979</u>
investigations:	108	101	70
disciplinary proceedings:	49	34	16
finest collected:	\$49,010	\$42,750	\$42,050
suspensions:	1	5	1
revocations:	1	1	0

We have been told by the Funeral Bureau that it is "almost impossible" to break down the complaints by category because of the Bureau's filing system. The Bureau has six full time investigators, who we were told are responsible for about one-half the investigations, with the other half generated by consumer complaints.

I hope that this information is responsive to your request.

Sincerely,

John C. Esposito
John C. Esposito
Special Counsel

Mr. ECKHARDT. What about complaints against funeral directors? Why do you say it is inappropriate to expect a lot of complaints?

Mr. ESPOSITO. I think the first problem is knowledge. I can speak from some personal experience on this issue, Mr. Chairman. Having arranged two funerals myself and being in the field of consumer protection, I found that when the time came I was not clear on what the necessities were, what the frills were, and I was not in a position to evaluate properly some of the claims made to me. Therefore, I think the simplest answer is that people do not complain because they do not know the extent to which they have been taken.

I think the first people, those who testified earlier, I think the first witness' situation was unusual. It probably occurred, judging from her comments, because the funeral director made a mistake in refusing to handle flowers. In other words, by doing something overt which she felt was clearly wrong, this was the beginning of a process whereby she learned how much in fact had been done to her. If the funeral director had not made that mistake she might not have been sitting her today.

Mr. ECKHARDT. Your agency deals with all kinds of consumer questions, does it not?

Mr. ESPOSITO. Yes; we are primarily an advocacy agency representing consumers before other State agencies.

Mr. ECKHARDT. Would it be correct to say that the problem of dealing with the purchasing of a funeral is one of those several things which one is engaged in perhaps once in a lifetime, two or three times in a lifetime, and it is quite difficult for the consumer ever to gain sufficient expertise and sufficient knowledge in order to be fully protected by a mere open bargaining relationship? I would say that is probably true to a lesser extent in the case of moving.

Mr. ESPOSITO. Yes.

Mr. ECKHARDT. Or buying a home.

Mr. ESPOSITO. Yes.

Mr. ECKHARDT. Selling a home.

Mr. ESPOSITO. That is right.

Mr. ECKHARDT. In these matters people are not really expert and I would assume this is one of those situations. I would like to have your comment.

Mr. ESPOSITO. I think in the case of most other major purchases people would not dream of investing the amount of money they do typically for funerals without having some perspective on what the market situation is.

When you add to that the fact this is a once or twice in a lifetime kind of purchase, the emotional vulnerability that the purchaser is exposed to, I think it is the ultimate in legal fiction to talk about a meeting of the minds or a true bargaining situation in the way the law talks about those concepts.

Mr. ECKHARDT. I suppose this is a related matter, but also there may be the question of a kind of reluctance to haggle about a situation which has the aura of dignity that a death does. You might argue with a title company as to whether the legal fee is too high, though that is infrequent, but it is more difficult to haggle over the cost of a flower arrangement.

Mr. ESPOSITO. To many people that appears to be unseemly. Everything about the way the industry operates, I think, reinforces that reluctance on the part of the purchaser to treat this as he would any other purchase.

Mr. ECKHARDT. Therefore, one would expect a certain restraint on the part of the industry itself, a certain fiduciary relationship between the industry and the individual because of that situation. Do you find that to be the case or not?

Mr. ESPOSITO. I think in the broader sense there is some fiduciary duty.

Mr. ECKHARDT. What I want to know is whether or not that sense of fiduciary duty, if there is one, seems to be adequate to restrain excesses or advantages or overreaching taken by persons in the funeral industry.

Mr. ESPOSITO. I would say generally speaking that that is not a restraining force on the part of the funeral directors. There are serious problems of overreaching, yes.

Mr. ECKHARDT. Mr. Gore?

Mr. GORE. I have no questions, Mr. Chairman. You covered it very well. I think your testimony was excellent and I appreciate your appearance here.

Mr. ESPOSITO. Thank you.

Mr. ECKHARDT. Ms. Whitney?

Ms. WHITNEY. Mr. Esposito, are there regulations pending or in effect now in New York State which require some affirmative disclosure about what State law truly is with regard to containers needed for cremation and the necessity for embalming?

Mr. ESPOSITO. There is on the books on the second point, necessity for embalming, a regulation presently in effect. This prevents directors from misrepresenting either legal or medical requirements for burials. Embalming would fall within that.

There have been, almost for the last 4 or 5 years in every session of the State legislature, proposed legislation to require affirmative disclosure of costs right across the board. That has not been successful.

Ms. WHITNEY. Does New York now require price itemization to be given at the time of arranging the funeral?

Mr. ESPOSITO. At the time of arranging the funeral, yes, but again that is pretty late in the game as far as informing the consumer. It can be used as a sales technique as much as a disclosure device.

Ms. WHITNEY. Does New York forbid licensing to persons practicing fraud, deceit, or misrepresentation, and provide for license removal and civil penalties?

Mr. ESPOSITO. Yes.

Ms. WHITNEY. Does New York provide for specific disclosure by way of a statement to consumers as to price of funeral services and merchandise?

Mr. ESPOSITO. At the time you are buying the services. That is the same question as before.

Ms. WHITNEY. It appears that New York has done quite a bit in this area of funeral regulation.

Mr. ESPOSITO. Yes. As I say, despite this, our survey, taken as recently as last week, indicates—well, No. 1, as far as the New

York City area directors were concerned, 11 out of 59 did not give us price information over the phone. That is roughly 20 percent. We did find a tremendously wide variation in the prices that were quoted to us for the same services, so that despite the protections you cite, we still see a need particularly for the affirmative price disclosure requirements.

Ms. WHITNEY. I am curious about this. You had some success in New York in legislating in this area. What do you feel the Federal Government can give you legislatively in the area of funeral industry regulations which the State of New York cannot?

What I am getting at here is why New York has, in effect, lost faith in its ability to legislate in this area by favoring a Federal law.

Mr. ESPOSITO. I think that first of all, when you look at a downstate area, we are talking about a tri-State situation of New York, New Jersey, and Connecticut, and whatever protections exist in New York would not necessarily extend to those other areas.

I think more importantly we have to realize the fact that the U.S. House of Representatives is not the only legislative body in this country where funeral directors have influence.

While there have been attempts to enact similar disclosure requirements on a State level, they have so far been defeated.

In fact, I think that the present congressional effort to undercut the FTC rule will only make it more difficult for advocates of disclosure on a State level to have State legislation that might supplement the Federal rule, because I think the action on the part of the House leaves the implication there is no problem when, in fact, we think there is a serious problem.

Ms. WHITNEY. It is generally acknowledged that the funeral industry is of an interstate character.

Mr. ESPOSITO. Yes.

Ms. WHITNEY. Can you give us approximately the number of how many New York State funerals involve out-of-State decedents?

Mr. ESPOSITO. I could not give you that figure. I suspect the association, the local associations, can do that.

Ms. WHITNEY. Thank you.

Mr. ECKHARDT. Thank you very much for your testimony.

Mr. ESPOSITO. Thank you, Mr. Chairman.

Mr. ECKHARDT. The subcommittee is adjourned subject to call of the Chair.

[Whereupon, at 2:30 p.m., the subcommittee adjourned to reconvene at the call of the Chair.]

FUNERAL INDUSTRY: FTC PROPOSED RULEMAKING

THURSDAY, FEBRUARY 21, 1980

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 11:30 a.m., in room 2322, Rayburn House Office Building, Hon. Bob Eckhardt (chairman) presiding.

Mr. ECKHARDT. The subcommittee will be in order.

Today is the second day of the subcommittee's hearings on the Federal Trade Commission's proposed trade regulation rule on funeral industry practices.

At the February 13 hearing, we examined the question of whether abusive practices exist in the funeral industry and how widespread any such abuses may be, as well as what the States response has been. I believe that the first day revealed that there are serious problems of bereaved persons being taken advantage of by funeral directors. There can be no excuse for charging a family for embalming 10 inches of charred remains.

More importantly, we received testimony that suggested that many practices of the industry—the refusal to give price information over the telephone or in person and embalming without permission—are standard operating procedure.

Moreover, we found that some practices—such as the arrangement of caskets and lighting to encourage the purchase of more expensive caskets—are institutionalized through the industry's own schools. These are serious matters that I am looking forward to discussing with the representatives of the funeral industry who will be testifying today.

But the focus of today's hearings will be more on the rulemaking procedures that FTC employed in considering the funeral rule. The Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, which was enacted in 1975, sets up a hybrid rulemaking scheme, part way between legislative rulemaking and the more formal procedures of adjudicative rulemaking. The Magnuson-Moss Act authorizes persons to present testimony at a hearing, to cross-examine witnesses on designated issues of material fact, and to submit rebuttal comments; and it requires the FTC to demonstrate to a court that its rule is supported by "substantial evidence on the record as a whole."

During the course of the day, the subcommittee will examine with the witnesses who participated in the FTC's rulemaking just how these procedures worked. Were people given a fair opportunity

to make their views known? What measurable impact did their participation make?

Moreover, a number of specific issues have been raised that challenge both the fairness of the proceeding and the correctness of its conclusions. Critics of the rule have leveled the following major charges against the rule that we will consider carefully today:

One, that the rule is not needed because industry abuses are rare and show no particular pattern;

Two, that the FTC staff had their minds made up before they began;

Three, that the FTC proceedings were flawed because no witnesses were sworn, no one was allowed to examine the FTC staff, and the FTC sought out friendly consumer groups for public participation funds;

Four, that more than 92 percent of the industry are small businesses and the Commission has not done a serious impact statement on the effect of the rule on them; and

Five, that itemization, the heart of the FTC proposal, increases the cost to consumers. Funeral representatives have submitted a study to the Council on Wage and Price Stability which claims that the rule could cost consumers \$50 million a year.

Our first witnesses today will be representatives of the Federal Trade Commission. But first, I recognize Mr. Lent for his opening comments.

Mr. LENT. Thank you, Mr. Chairman.

Good morning. At issue today is the proposed FTC funeral industry rule. From the start, my position on this rule has been clear—Federal regulation in this area is unwarranted.

Furthermore, the House of Representatives has already passed on this issue, having voted against such a rule by a substantial majority on November 14, 1979.

Therefore, I would hope we are not here to rehash the pros and cons of FTC regulation of this industry once again, but are here merely to conduct oversight of the Magnuson-Moss rulemaking proceeding, which is a legitimate oversight function.

It appears the Commission's basis for initiating this 5-year, \$1.2 million rulemaking proceeding was six letters and assorted magazine articles. By its own admission, the Commission only sporadically consulted the various consumer divisions of the States to find out the number of complaints they had received. During those 5 years in which some 10 million Americans died, the total number of complaints received by the FTC was between 700 and 1,000, representing a one ten-thousandths of 1 percent complaint ratio against the industry. In its staff report the FTC called the number "indeed, modest." I say it is not only modest; it is miniscule. Clearly, the American people do not want Federal regulation of one more industry, the funeral industry, and with the broad jurisdiction given the FTC, certainly there are a host of other consumer issues which are far more deserving of the Commission's limited resources.

Furthermore, the funeral industry is small business intensive—more than 92 percent of the Nation's funeral homes are small businesses, employing an average of 2.3 full-time employees. I believe that the more we impose bureaucratic regulations upon any industry, the more difficult we make it for the small operator to

continue to exist, and the more we add to the cost ultimately to the consumer.

In addition, the effect of the funeral industry on interstate commerce is minimal—90 percent of all funeral establishments operate purely within one State or locality. And since we have more than 4,000 units of State and local government which have ample powers to deal with any sharp practices or consumer abuses which might arise in their jurisdiction, I believe the justification for State regulation is overwhelming.

Mr. Chairman, I have today letters from two State attorneys general—North Carolina and North Dakota—which say, in essence, that regulation of the funeral service industry is best left to the States, because the States can respond more directly and more effectively to the funeral industry than can the Federal bureaucracy. I also ask unanimous consent that the record remain open for the possible inclusion of several other statements from State attorneys general who share these same views.

Mr. ECKHARDT. Can we have those letters identified?

Mr. LENT. One is a letter dated February 11 from the State attorney general, Rufus L. Edmisten, of the State of North Carolina, and a letter dated February 11 from the attorney general, Allen I. Olson, of the State of North Dakota.

Mr. ECKHARDT. Do you just want the letters included in the record? I notice there is a very extensive attachment here.

Mr. LENT. We would like to have it all in.

Mr. ECKHARDT. Is this the whole North Carolina law?

Mr. LENT. That is the statute.

Mr. ECKHARDT. Plus the statement of the attorney general.

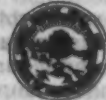
Mr. GORE. Mr. Chairman, reserving the right to object, and I will not object, I wonder if we could also include in the record a brief analysis comparing the laws of these two States and the proposed FTC rule.

Mr. ECKHARDT. Is there objection to introducing these documents plus the request of the gentleman from Tennessee, Mr. Gore?

Hearing none, they will be introduced into the record.

[Testimony resumes on p. 127.]

[The material referred to follows. See p. 137 for comparative charts referred to by Mr. Gore.]



STATE OF NORTH DAKOTA
ALLEN I. OLSON
Attorney General
State Capitol
Bismarck, North Dakota 58505

February 11, 1980

Honorable Norman F. Lent
c/o Claire Whitney
U. S. House of Representatives
3555 House Office Building
Annex #2
Washington, D.C. 20515

Dear Sir:

I write to express my opposition to federal intervention in the regulation of funeral and related services.

The States are capable of effective regulation in this area. Through the Consumer Fraud and Antitrust Division of my office and other state consumer programs, North Dakota has been able to assure fair and reasonable funeral services without unduly burdening providers in small communities.

Sincerely,

Allen I. Olson

Allen I. Olson
Attorney General

afm



State of North Carolina

Department of Justice

P. O. Box 629

RALEIGH
27602

February 11, 1980

RUFUS L. EDMISTEN
ATTORNEY GENERAL

The Honorable Norman S. Lent
c/o Claire Whitney
United States House of Representatives
3555 House Office Building - Annex 2
Washington, D. C. 20515

Dear Congressman Lent:

I am writing to express my opposition to federal regulation of the funeral industry as contemplated by the Federal Trade Commission in its proposed Trade Regulation Rule for Funeral Industry Practices. I understand you are looking at that proposed rule as part of a broader consideration of the manner in which the Federal Trade Commission handles its responsibilities. At the time the FTC was considering the proposed rule governing funeral industry practices, I submitted a written statement, a copy of which is attached to this letter, and made a personal appearance to express my strong opposition to the proposed rule. Although the statement I made at that time is somewhat outdated, the concerns I put forward at that time remain current, motivating me to write to you today.

Funeral industry practices are an area peculiarly appropriate for state, rather than federal, regulation. The proposed Trade Regulation Rule of the FTC was addressed to problems believed to exist generally in this country, but did not and does not take into account the variations among the respective States and their laws, enforcement activities, local funeral industry practices, and local social and cultural factors. North Carolina is a predominantly rural or small-town State in which most communities have only a few funeral service establishments. Funeral industry members tend to be well known to the community, and their business practices are likely to be equally well-known. This kind of public scrutiny and awareness of funeral home practices and the funeral homes themselves provides a check on unscrupulous practices in a manner apparently not contemplated or not considered sufficiently by the FTC staff. Similarly, in a state like North Carolina, attitudes toward death and funeral and burial practices are likely to stem largely from social and cultural factors which differ significantly from those of more metropolitan states. The small town and rural nature of my state tends to foster a more general community

The Honorable Norman S. Lent
Page Two
February 11, 1980

standard which is likely to be subscribed to by bereaved families. The practices of the funeral service industry and related businesses naturally vary with these factors. Consequently, the desires of consumers and the types of governmental activity needed in this field necessarily differ in North Carolina from those in more metropolitan areas of the type primarily studied by the FTC, where different social and cultural factors are present.

North Carolina has undertaken to regulate the practices of the funeral service industry in some of the same respects aimed at by the FTC's proposed rule on funeral industry practices. Thus, North Carolina law requires that a person or persons making funeral arrangements be given a written, signed statement showing the price of the funeral service selected, what services are included therein, the price of each supplemental item of service or merchandise requested, and the amounts involved for each item for which the funeral establishment will advance money as an accommodation to the person making arrangements. The statement is also required to show on it that the disclosure is provided pursuant to the requirement of North Carolina law. North Carolina General Statutes §90-210.25(e). North Carolina also prohibits a funeral service establishment from accepting a dead human body from any public officer, from any institution, hospital, or nursing home, or from a physician, without making appropriate inquiries as to the desires of the next-of-kin and persons chargeable with funeral expenses. No charge may be made for services provided as a result of receiving the remains in violation of this requirement prior to delivery of the body as stipulated by the next-of-kin. North Carolina General Statutes §90-210.25(e). North Carolina does permit advertising by funeral service industry members, but makes false or misleading advertising the grounds for revocation or suspension of a license or refusal to issue or renew a license. North Carolina General Statutes §90-210.25(e). The funeral industry is regulated by a board of nine people, seven members of the industry elected by all licensees, the chairman of the North Carolina Commission for Health Services as an ex officio member, and one public member appointed by the governor. North Carolina General Statutes §90-210.18(b), (c). This board has taken an active role in seeking to ensure compliance with the requirements of the funeral industry practice laws. These provisions, and other provisions included in the funeral industry practice statute, a copy of which is enclosed with this letter, provide an effective mechanism for achieving many, if not all, of the very goals sought to be reached by the Federal Trade Commission's proposed rule for the funeral service industry. However, these statutory provisions have been enacted with specific consideration of the North Carolina funeral industry and the needs, desires and experiences of consumers in North Carolina, in a

The Honorable Norman S. Lent
Page Three
February 11, 1980

way that the FTC's proposed rule, nor any other federal action, cannot do.

North Carolina consumers can also look to my office for help in the event that they experience difficulties in dealing with the North Carolina funeral industry. My office has an active Consumer Protection Section. Consumers in North Carolina can, and certainly do, write and call to complain about problems they incur as consumers in all aspects of their lives. Our office is quick to respond to these complaints, and we are able to assist consumers on an individual basis to cope with individual problems in a manner not available to the Federal Trade Commission or any other federal agency. Moreover, we can and frequently do help resolve problems that are not the result of actual violations of law or shady business practices, but simply the result of a misunderstanding on the part of the consumer. Moreover, both our Consumer Protection and Anti Trust Sections are always on the lookout for practices which suggest a need for legal action by my office. Chapter 75 of the North Carolina General Statutes prohibits unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce and authorizes our office to initiate suits against violators. While we have not done so in respect to members of the funeral service industry, we have done so against members of other industries, and we could and would do so if the need arose in regard to the funeral service industry.

In sum, I believe that the funeral service industry is an intra state, essentially local, industry, at least in states like North Carolina. Regulation of the funeral service industry is best left to the states, which can shape their laws and enforcement activities to the funeral service industry practices and the social and cultural norms of their respective populations, whose concerns the states can respond to more directly and more effectively than can the federal bureaucracy.

Sincerely,

Rufus L. Edmisten

Rufus L. Edmisten
Attorney General

/p

CC: Congressman James Broyhill
Mr. Larry Stegall



State of North Carolina

Department of Justice

RUFUS L. EDMISTEN
ATTORNEY GENERAL

P. O. Box 939
RALEIGH
27602

September 13, 1978



Secretary, Federal Trade Commission
6th Street and Pennsylvania Avenue N.W.
Washington, D.C. 20580

Dear Sir:

Enclosed please find five copies of the "Comment of presiding officer and staff reports-funeral industry practices TMR", submitted on behalf of the Attorney General of the State of North Carolina.

Thank you for extending us this opportunity to comment upon these reports.

Very truly yours,

RUFUS L. EDMISTEN
ATTORNEY GENERAL

Leigh Emerson Koman
Leigh Emerson Koman
Assistant Attorney General

LEK/jak
Enclosure

COMMENT ON PRESIDING OFFICER AND STAFF REPORTS-

FUNERAL INDUSTRY PRACTICES TR

As Attorney General of the State of North Carolina, I welcome the opportunity extended by the Federal Trade Commission to comment upon the presiding officer and staff reports relating to funeral industry practices, and particularly those portions of the report involving the interrelation of federal and state requirements. I have previously provided written and oral comments on the Commission's proposed Trade Regulation Rule on Funeral Industry Practices. I ask that those comments be deemed included in this comment in their entirety, however, I would like to reiterate some of the points previously made.

I share the concern of the FTC that consumers not be victimized by unscrupulous funeral industry members, or by practices which may be unfair or deceptive, and I would like to praise the effort undertaken by the FTC in its endeavors to deal with these problems. Nevertheless, I still feel that in North Carolina, the North Carolina Attorney General's Office, the Cemetery Commission, and the Board of Mortuary Science have all taken active roles in ensuring that consumers not be victimized in the area of funeral and burial services, thereby obviating the need of a trade regulation rule such as that proposed by the Commission. Allow me to reiterate some of the actions taken in North Carolina in response to perceived problems in the area of funeral industry practices.

The North Carolina Attorney General's Office has a vigorous Consumer Protection Section which responds to consumer complaints about all kinds of unfair or dishonest business acts or practices, including complaints about the funeral industry and related fields such as cemeteries and mutual burial associations. My Office is also currently engaged in an ongoing comprehensive investigation and evaluation of occupational licensing boards and licensing statutes in North Carolina, including those relating to the funeral industry. The Antitrust Section in my Office is also currently looking into the incidence of cemeteries requiring consumers to purchase bronze grave markers from them and the incidence of these cemeteries charging exorbitant fees for the installation of any markers purchased from other sources.

Portions of the General Statutes of North Carolina provide protection for consumers of products or services related to the funeral industry. Chapter 75 relates to monopolies, trusts and consumer protection and contains specific provisions which declare unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce to be illegal. Both the Consumer Protection Section and the Antitrust Section in my Office have authority to bring appropriate actions against persons violating any of the provisions in Chapter 75. This authority includes the power to issue a civil investigative demand, obtain injunctive relief, recover attorneys' fees and civil penalties and, in some instances, bring criminal actions.

Legislation enacted in 1975 created the North Carolina Cemetery Commission and gave the Commission broad authority to investigate and

oversee the operations and activities of the cemeteries in North Carolina.

Among the powers granted the North Carolina Cemetery Commission is the authority to revoke or suspend a license of any licensed cemetery, cemetery company, sales organization, management organization or broker making any substantial misrepresentation, making any false statements likely to influence or persuade, or engaging in any other conduct which constitutes fraud or dishonest dealing. G.S. §65-53.

In addition to these safeguards, provisions in North Carolina law deal with many of the specific practices enumerated in the Trade Regulation Rule. For example, G.S. §90-210.25(e) forbids a funeral establishment from receiving a dead body from anyone, whether it be a law enforcement officer, doctor, institution, or whomever, without first learning and following the wishes of the next of kin or other appropriate person in making funeral arrangements. Any funeral service establishment which does not try to discover and abide by the wishes of the next-of-kin cannot receive payment for any actions taken before the establishment ascertains and begins following the wishes of the relatives. The statute also expressly defines as unprofessional conduct, for which the penalty is loss of license, the refusal by a funeral service person to surrender promptly the custody of the body whenever the person lawfully entitled to custody orders him to surrender it.

G.S. §90-210.25(e) further requires that if a licensee presents a selection of funeral merchandise for sale to the public in connection with the service to be provided by the licensee, the licensee must provide a card or brochure setting forth the price of the service

using said merchandise and listing the services and other merchandise included in the price. When there are separate prices for merchandise and services, the card or brochure must indicate the price of the merchandise or items separately priced. In addition, all funeral service establishments must give the consumer an itemized list, in advance, of the price of the service selected, what services and merchandise are included therein, and the prices of all supplemental items, merchandise, or services. This provision in our law prevents unscrupulous funeral service industry members from concealing any charges the purchaser will be expected to pay, from adding merchandise or services not requested by the consumer to the final bill, and from hiding advances or accommodation items in the bill so that the consumer is unable to understand what he is being charged for and how much he is being charged.

As is obvious from the brief recitation of North Carolina law in this area, there is a great deal of similarity between the provisions in the FTC's Trade Regulation Rule and the terms of North Carolina law. Public officials in North Carolina are committed to the enforcement of the provisions of North Carolina law and especially those provisions relating to consumer protection.

North Carolina's Attorney General's Office, the Cemetery Commission, and the Board of Mortuary Science have all taken active roles in ensuring that consumers not be victimized in the area of funeral and burial services. These dedicated public officials strive constantly to provide as much protection as possible for the citizens in North Carolina.

Obviously, there are still many instances of consumer victimization which require our diligent efforts to enforce the laws and to obtain the enactment of new laws in this field. But I believe that we are responding to problems as they currently exist in North Carolina and specifically addressing ourselves to the areas in which our consumers most need protection.

I am also concerned that the Trade Regulation Rule circumscribes and regulates the activities of funeral service directors and funeral establishments to too great an extent, in that the Rule prescribes in detail the way they must deal with consumers in all aspects of funeral transactions and requires a large number of affirmative disclosures. The Rule has the effect of specifying virtually all of a funeral director's activities, leaving him very few areas of independent business judgment. North Carolina law provides much the same protection as does the FTC Rule, but does not impose the detailed requirements, thereby permitting each establishment to decide how best to comply with the various requirements. The current industry practices in North Carolina, especially in light of our far-reaching law regulating funeral service licenses, do not warrant any further governmental action.

North Carolina has vigorously sought to correct and prevent many of the real and potential abuses by the funeral service industry which the Trade Regulation Rule seeks to prevent. I have previously mentioned G.S. §90-210.25(e) and some of the provisions contained therein. The same statute also defines unprofessional conduct to include false

or misleading advertising and the solicitation of dead bodies, but specifically warns that the latter provision is not to be treated as a general prohibition on advertising. This statute clearly does not forbid or restrict advertising by funeral service industry members and would not permit the State Board of Mortuary Science to outlaw advertising if it desired to do so. In fact, it does not do so.

I would like to re-emphasize that the relevant North Carolina laws achieve the basic goals aimed at by the Trade Regulation Rule for Funeral Industry Practices. We have a comprehensive and effective law which addresses the problems sought to be remedied by the Rule. My Office has made and will continue to make vigorous efforts to ensure compliance with this statute, through our normal activities dedicated to enforcing the laws of North Carolina and through our responses to consumer complaints and questions received by the Consumer Protection and Antitrust Sections. Although I share the concerns and goals which prompt the proposal of the Trade Regulation Rule, I do not believe it is a necessary or desirable means of protecting the consumers of North Carolina.

North Carolina's funeral industry laws provide protection for our citizens which is very similar to the kind of protection sought to be accomplished through the Trade Regulation Rule. My Office has undertaken a serious, comprehensive evaluation of licensing boards and laws in North Carolina and is currently on the lookout for abuses of authority by licensing

boards, including the Board of Mortuary Science, and for areas in which statutory amendments are needed to preserve the rights of our citizens against encroachment by licensing boards and laws. The Board of Mortuary Science has been responsive to consumer complaints and has used its powers to revoke and suspend licenses and to proceed against licensees in State courts to compel compliance with the funeral industry laws. It has also persuaded other licensees to correct questionable conduct by warning them that the consequences for such conduct, if established, could be loss of their licenses as funeral service industry members. My Office has used its extensive powers to protect the citizens of North Carolina through the Consumer Protection Section, the Antitrust Section, and our constant vigilance to ensure that the laws of North Carolina are properly enforced.

The Federal Trade Commission cannot respond to and resolve individual complaints, which often do not involve an actual violation of law, as well as the Consumer Protection Section of my Office can. North Carolina citizens will continue to be aided in resolution of their problems with the funeral industry more effectively by the continued vigorous actions of the State, and particularly of my Office, in adopting and enforcing significant legislative and regulatory provisions than by the Trade Regulation Rule of the Federal Trade Commission.

The funeral industry is especially appropriate for this kind of vigorous state protection because of its peculiarly local nature in North Carolina. North Carolina is a predominantly rural or small-town State in which most communities have only a few funeral service establishments. The funeral service industry members are well known to

the community, and their practices are likely to be equally well-known. This kind of public scrutiny and awareness of funeral homes provides a check on unscrupulous practices in a manner not fully contemplated or considered by the FTC staff. Because of the local character of the funeral industry, the local variations in consumer wishes regarding funerals and other methods for taking care of deceased relatives, and the responsiveness of the State to those concerns and needs, I believe that this is the type of area in which it is peculiarly inappropriate for the FTC to intrude. I also believe that North Carolina's vigorous efforts in this field and our responsiveness to our citizens create precisely the kind of situation in which Congress clearly indicated it did not wish the FTC to intrude.

In addition to the concern which I have expressed with regard to the breadth and the detail in the Commission's Trade Regulation Rule, I continue to have concern, expressed in earlier comments, that the FTC has gone beyond its authority in preempting state law and regulations. Prior comments filed with the FTC have dealt in detail with legislative history of the Magnuson-Moss Federal Trade Commission Improvements Act and the belief on my part that in proposing and adopting this Rule, the FTC would be exceeding the authority given it to involve itself in the area of consumer fraud or protection.

I will not belabor this point, other than to repeat certain language contained in reports of the House and Senate Committees accompanying the Magnuson-Moss bill. The Report of the House Committee on Interstate and Foreign Commerce stated:

Where cases of consumer fraud of a local nature which affect commerce are being

effectively dealt with by State or local government agencies, it is the Committee's intent that the Federal Trade Commission should not intrude. H.R. Rep. No. 93-1107, 93d Cong., 2d Sess. 45 (1974).

The Senate Commerce Committee Report also expressed concern for this issue:

In considering certain arguments against expansion of the Commission's jurisdiction, the Committee was mindful of the danger of making the Commission alone responsible for eradicating fraud and deceit in every corner of the marketplace. This is not the Committee's intent in expanding the jurisdiction of the Commission. State and local consumer protection efforts are not to be supplanted by this expansion of jurisdiction. (Emphasis supplied). S. Rep. No. 93-151, 93d Cong., 1st Sess. 27 (1973).

It is clear from this language contained in the committee reports that Congress did not intend to supplant the States' efforts to protect their citizens. Nor did it intend for the Federal Trade Commission to involve itself in any area in which a State is making vigorous and effective efforts to protect its citizens. Such a situation exists in North Carolina.

The Commission has declared its intent to preempt only state law which may be contrary or repugnant to the Trade Regulation Rule on Funeral Industry Practices. Clearly, the essentially local character of funeral industry practices does not require uniformity in this area. Nor is there any clear congressional mandate that state law be preempted. To the contrary, the legislative history of the Magnuson-Moss Federal Trade Commission Improvements Act demonstrates unequivocally that Congress specifically provided that State regulatory activities were not to be preempted by the Act. The intent to preempt must come from Congress, not from the FTC.

Whether preemption is viewed in the broad sense of federal regulation occupying a field to the exclusion of state regulation, or in the narrow sense of nullifying only state regulations which conflict with federal regulations, I find it inherently incredible that Congress, in passing Magnuson-Moss, intended to make the efforts of the fifty elected state legislatures to regulate trade and commerce within their boundaries subject to the detailed rules of a federal agency. I cannot believe that Congress has constituted the FTC a super legislature in this area or that the States are to be denied the power to protect consumers in matters of local concern unless they receive the permission of a federal agency.

The Federal Trade Commission cannot declare the laws or regulatory programs of North Carolina, or of any other state, to be preempted by FTC Trade Regulation Rules on the basis of its naked assertion of the power. The FTC, like any other federal agency, may adopt rules pursuant to power lawfully delegated by Congress. Only if Congress delegated the necessary authority to the FTC, can an FTC Trade Regulation Rule interfere in any way with State regulatory programs. Assuming that the FTC has lawfully exercised power delegated to it by Congress, the question for the courts then becomes whether Congress intended to preempt the field. Congress may preempt state laws only by clearly indicating its intention to do so. In this instance, however, as has been previously explained, Congress explicitly expressed its intent not to preempt. Congress may also preempt state law which specifically conflicts with or thwarts the purpose of its own regulatory program. But the question in such cases is whether the congressional goals embodied in a statute

would be frustrated by state laws or regulations which directly conflict with or thwart the effectiveness of national regulatory policy.

The determination of whether and which state laws and administrative regulations are preempted must be made by the Supreme Court, in its interpretation of the valid exercise by Congress of its constitutional authority over Congress. Only state statutes and regulations which squarely conflict with or thwart the effectiveness of a validly adopted Trade Regulation Rule adopted by the FTC will be preempted by the FTC regulation. Only when a specific, properly adopted Trade Regulation Rule is juxtaposed with a particular state law or regulation claimed to conflict with it can it be determined what, if any, state regulations are displaced. We must await the development of an actual controversy between any Trade Regulation Rule adopted to regulate funeral industry practices and any state laws or regulations claimed to conflict with them. Only judicial determination of such conflicts, not the assertion of power by the Federal Trade Commission, can delineate the respective roles of the FTC and the States in the regulation of funeral industry practices.

In sum, I applaud the consumer protection goals underlying the Trade Regulation Rule for Funeral Industry Practices. However, I believe the problems in this area can be dealt with better by the States, and I submit that North Carolina is pursuing a vigorous consumer protection policy which better serves the needs of her people than would the adoption by the FTC of the Trade Regulation Rule.

The FTC is exceeding the spirit of the Magnuson-Moss Federal Trade Commission Improvements Act, and the authority granted to it by the statute, in proposing the Trade Regulation Rule for Funeral Industry Practices. Moreover, it seeks to usurp the respective roles of Congress and the Supreme Court in declaring the rule preemptive of state regulatory efforts in the field. It is my fervent wish that the Federal Trade Commission will recognize the essentially local character of funeral services industry and the vigorous efforts of North Carolina and other States to protect consumers from unfair or deceptive dealings in this field, and abandon its plan to intrude into the State's proper realm of regulation and consumer protection.

ARTICLE 13.

Embalmers and Funeral Directors.

§§ 90-203 to 90-210.17: Recodified as §§ 90-210.18 to 90-210.25, effective October 1, 1975.

Editor's Note. — This Article was rewritten 1975, and has been recodified as Article 13A: § 90-210.18 et seq., of this Chapter.

ARTICLE 13A.

Practice of Funeral Service.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 112, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 90-210.18. State Board; members; election; qualifications; term; vacancies. — (a) The General Assembly declares that the practice of funeral service affects the public health, safety and welfare, and is subject to regulation and control in the public interest. The public interest requires that only qualified persons be permitted to practice funeral service in North Carolina, and that the profession merit the confidence of the public. This Article shall be liberally construed to accomplish these ends.

(b) The North Carolina Board of Mortuary Science is hereby created as a continuation of the North Carolina Board of Embalmers and Funeral Directors, which was heretofore created by Chapter 338, Public Laws 1901; by Chapter 174, Public Laws 1981; by Chapter 951, Public Laws 1949; by Chapter 1240, Public Laws 1957; and continued by Chapter 630, Public Laws 1965, and the Board of Mortuary Science is hereby created as the agency of the State for regulation of the practice of funeral service in this State. Said Board of Mortuary Science shall consist of five funeral service licensees licensed to practice in North Carolina and two funeral directors who are licensed to practice funeral directing in North Carolina, or two funeral service licensees licensed to practice in North Carolina, and who possess other qualifications hereinafter specified and who shall have been elected in an election held as hereinafter provided in which every person licensed to practice embalming, funeral directing or funeral service in North Carolina shall be entitled to vote. Each of said five funeral service licensees shall be elected for a term of five years and until his successor shall be elected and shall qualify and each of said two funeral directors or two funeral service licensees shall be elected for a term of two years and until his successor shall be elected and shall qualify. Each year there shall be elected one funeral service licensee for a term of five years and one funeral director or funeral service licensee for a term of two years. Any vacancy occurring on said Board shall be filled for the period of the unexpired term by a majority vote of the remaining members of the Board. No funeral service licensee shall be nominated for

membership on said Board, or shall be elected to membership on said Board unless, at the time of such nomination, and at the time of such election, he is licensed to practice funeral service in North Carolina and actually engaged in the practice of funeral service in North Carolina. No funeral director shall be nominated for membership on said Board or shall be elected to membership on said Board unless, at the time of such nomination and at the time of such election, he is licensed to practice funeral directing in North Carolina and actually engaged in the practice of funeral directing in North Carolina. In addition to the seven members above provided for, the chairman of the Commission for Health Services shall serve ex officio as a member of said Board and one public member of the Board appointed by the Governor who shall be a voting member of the Board.

The first member appointed by the Governor shall serve until June 30, 1977, or until his successor is appointed. Thereafter, the Governor shall appoint such member of the Board to serve for a four-year term, beginning on July 1, 1977. The member of the Board appointed by the Governor shall not be a person licensed under this Article and such person shall not be employed by a person licensed under this Article.

(c) Nominations and elections of members of the North Carolina State Board of Mortuary Science shall be as follows:

- (1) An election shall be held each year to elect two persons for membership on the Board of Mortuary Science, each to take office on the first day of January following the election; one funeral service licensee to hold office for a term of five years and until his successor has been elected and shall qualify, and one funeral director or funeral service licensee to hold office for a term of two years and until his successor has been elected and shall qualify; provided that if in any year the election of the members of such Board for that year shall not have been completed by January 1 of that year, then the said members elected that year shall take office immediately after the completion of the election and the five-year member shall hold office until the first of January of the fifth year thereafter and until his successor is elected and qualified and the two-year member shall hold office until the first of January of the second year thereafter and until his successor is elected and qualified.
- (2) Every embalmer, funeral director and funeral service licensee with a current North Carolina license shall be eligible to vote in all elections. The holding of such a license to practice in North Carolina shall constitute registration to vote in such elections. The list of licensed embalmers, funeral directors and funeral service licensees shall constitute the registration list for elections.
- (3) All elections shall be conducted by the State Board of Mortuary Science which is hereby constituted a Board of Mortuary Science Elections. If a member of the State Board of Mortuary Science whose position is to be filled at any election is nominated to succeed himself and does not withdraw his name, he shall be disqualified to serve as a member of the Board of Mortuary Science Elections for that election and the remaining members of the Board of Mortuary Science Elections shall proceed and function without his participation.
- (4) Nomination of candidates for election shall be made to the Board of Mortuary Science Elections by a written petition signed by not less than 20 embalmers, funeral directors or funeral service licensees licensed to practice in North Carolina, and filed with said Board of Mortuary Science Elections subsequent to the fifteenth day of May of the year in which the election is to be held and not later than midnight of the fifteenth day of August of such year, or not later than such earlier date (not before July 1) as may be set by the Board of Mortuary Science Elections: Provided, that not less than 10 days' notice of such earlier

date shall be given to all embalmers, funeral directors and funeral service licensees qualified to sign a petition of nomination.

- (5) Any person who is nominated as provided in subdivision (4) above may withdraw his name by written notice delivered to the Board of Mortuary Science Elections or its designated secretary at any time prior to the closing of the polls in any election.

- (6a) No person is eligible to serve two consecutive elective terms as a member of the State Board of Mortuary Science, whether the terms be two-year, five-year, or any combination of two-year and five-year terms.

- (6) Following the close of nominations, there shall be prepared, under and in accordance with such rules and regulations as the Board of Mortuary Science Elections shall prescribe, ballots containing, in alphabetical order, the names of all nominees; and each ballot shall have such method of identification, and such instructions and requirements printed thereon, as shall be prescribed by the Board of Mortuary Science Elections at such time as may be fixed by the Board of Mortuary Science Elections a ballot and a return official envelope addressed to said Board shall be mailed to each embalmer, funeral director and funeral service licensee licensed to practice in North Carolina, together with a notice by said Board designating the latest day and hour for return mailing and containing such other items as such Board may see fit to include. The said envelope shall bear a serial number and shall have printed on the left portion of its face the following:

"Serial No. of Envelope
Signature of Voter
Address of Voter

(Note: The enclosed ballot is not valid unless the signature of the voter is on this envelope)." The Board of Mortuary Science Elections may cause to be printed or stamped or written on said envelope such additional notice as it may see fit to give. No ballot shall be valid or shall be counted in an election unless within the time hereinafter provided it has been delivered to said Board by hand or by mail and shall be sealed. The said Board by rule may make provision for replacement of lost or destroyed envelopes or ballots upon making proper provisions to safeguard against abuse.

- (7) The date and hour fixed by the Board of Mortuary Science Elections as the latest time for delivery by hand or mailing of said return ballots shall be not earlier than the tenth day following the mailing of the envelopes and ballots to the voters.

- (8) The said ballots shall be canvassed by the Board of Mortuary Science Elections beginning at noon on a day and at a place set by said Board and announced by it in the notice accompanying the sending out of the ballots and envelopes, said date to be not later than four days after the date fixed by the Board for the closing of the balloting. The canvassing shall be made publicly and any licensed embalmer, funeral director or funeral service licensee may be present. The counting of ballots shall be conducted as follows: The envelopes shall be displayed to the persons present and an opportunity shall be given to any person present to challenge the qualification of the voter whose signature appears on the envelope or to challenge the validity of the envelope. Any envelope (with enclosed ballot) challenged shall be set aside, and the challenge shall be heard later or at that time by said Board. After the envelopes have been so exhibited, those not challenged shall be opened and the ballots extracted therefrom, insofar as practicable without showing the marking on the ballots, and there shall be a final and complete

separation of each envelope and its enclosed ballot. Thereafter, each ballot shall be presented for counting, shall be displayed and, if challenged, shall be counted. No ballot shall be valid if it is marked for more nominees than there are positions to be filled in that election. Provided, that no ballot shall be rejected for any technical error unless it is impossible to determine the voter's choices or choice from the ballot. The counting of ballots shall be continued until complete. During the counting, challenge may be made to any ballot on the grounds only of defects appearing on the face of the ballot. The Board may decide the challenge immediately when it is made or it may put aside the ballot and determine the challenge upon the conclusion of the counting of the ballots.

(9) If one of the nominees shall receive a majority of the votes cast, he shall be declared elected. If no candidate shall receive a majority of the votes cast, the said Board shall order a second election to determine a contest between the two candidates receiving the highest number of votes. In any election if there is a tie between candidates, the tie shall be resolved by the vote of the State Board of Mortuary Science, provided that if a member of that Board is one of the candidates in the tie, he may not participate in such vote.

(10) In the event there shall be required a second election, there shall be followed the same procedure as outlined in the paragraphs above subject to the same limitations and requirements.

(11) In the case of the death or withdrawal of a candidate prior to the closing of the polls in any election, he shall be eliminated from the contest and any votes cast for him shall be disregarded. If, at any time after the closing of the period for nominations, because of lack of plural or proper nominations, or death, or withdrawal, or disqualification or any other reason, there shall be (i) only one candidate for a position, he shall be declared elected by the Board of Mortuary Science Elections, or (ii) no candidate for a position, the position shall be filled by the State Board of Mortuary Science. In the event of the death or withdrawal of a candidate after election but before taking office, the position to which he was elected shall be filled by the State Board of Mortuary Science. In the event of the death or resignation of a member of the State Board of Mortuary Science, after taking office, his position shall be filled for the unexpired term by the State Board of Mortuary Science.

(12) An official list of all licensed embalmers, funeral directors and funeral service licensees shall be kept at an office of the Board of Mortuary Science Elections and shall be open to the inspection of any person at all times. Copies may be made by any licensed embalmer, funeral director or funeral service licensee. As soon as the voting in any election begins, a list of the licensed embalmers, funeral directors, and funeral service licensees shall be posted in such office of said Board and indication by mark or otherwise shall be made on that list to show whether a ballot-enclosing envelope has been returned.

(13) All envelopes enclosing ballots and all ballots shall be preserved and held separately by the Board of Mortuary Science Elections for a period of six months following the close of an election.

(14) From any decision of the Board of Mortuary Science Elections relative to the conduct of such elections, appeal may be taken to the courts in the manner otherwise provided by Chapter 150A of the General Statutes of North Carolina.

(15) The Board of Mortuary Science Elections is authorized to make rules and regulations relative to the conduct of these elections, provided same are not in conflict with the provisions of this section and provided that notice shall be given to all licensed embalmers, funeral directors, and funeral service licensees.

(d) The Board of Mortuary Science Elections is authorized to appoint such secretary or secretaries and/or assistant secretary or assistant secretaries to perform such functions in connection with such nominations and elections as said board shall determine, provided that any protestant or contestant shall have the right to a hearing by said Board in connection with any challenge of a voter, or an envelope, or a ballot or the counting of an election. Said Board is authorized to designate an office or offices for the keeping of lists of registered embalmers, funeral directors and funeral service licensees, for the issuance and receipt of envelopes and ballots. (1901, c. 338, ss. 1-3; Rev., s. 4384; C. S., s. 6777; 1931, c. 174; 1945, c. 98, s. 1; 1949, c. 951, s. 1; 1957, c. 1240, s. 1; 1965, c. 630, s. 1; 1973, c. 476, s. 128; 1975, c. 571; 1979, c. 461, ss. 1-4.)

Editor's Note. — This Article is Article 13 of the Chapter as rewritten by Session Laws 1975, c. 571, effective Oct. 1, 1975, and recodified. Where appropriate, the historical citations to the sections of the former Article have been added to the corresponding sections of the new Article.

The 1979 amendment, effective July 1, 1979, rewrote subsection (a), deleted "and unless he has had a license to practice funeral service or embalming in North Carolina for not less than

five consecutive years prior thereto" at the end of the sixth sentence of subsection (b), deleted "and unless he has had such license to practice funeral directing in North Carolina for not less than five consecutive years prior thereto" at the end of the seventh sentence of subsection (b), rewrote subdivision (5a) of subsection (c) and substituted "Chapter 150A" for "Article 33 of Chapter 143" in subdivision (14) of subsection (c).

§ 90-210.19. Oath of office. — The members of said Board, before entering upon their duties, shall take and subscribe to the oath of office prescribed for other State officers, which said oath shall be administered by a person qualified to administer such oath and shall be filed in the office of the Secretary of State. (1901, c. 338, ss. 3, 4; Rev., s. 4385; C. S., s. 6778; 1945, c. 98, s. 2; 1949, c. 951, s. 2; 1957, c. 1240, s. 2; 1969, c. 584, s. 1; 1973, c. 476, s. 128; 1975, c. 571.)

§ 90-210.20. Definitions. — (a) "Advertisement" means the publication, dissemination, circulation or placing before the public, or causing directly or indirectly to be made, published, disseminated or placed before the public, any announcement or statement in a newspaper, magazine, or other publication, or in the form of a book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label or tag, or over any radio or television station.

(b) "Board" means the North Carolina State Board of Mortuary Science.

(c) "Burial" includes interment in any form, cremation and the transportation of the dead human body as necessary therefor.

(d) "Embalmer" means any person engaged in the practice of "embalming" as defined below.

(e) "Embalming" means the preservation and disinfection or attempted preservation and disinfection of the dead human bodies by application of chemicals externally or internally or both and the practice of restorative art including the restoration or attempted restoration of the appearance of the dead human body.

(f) "Funeral directing" means engaging in the practice of funeral service except embalming as hereinbefore defined.

(g) "Funeral director" means any person engaged in the practice of "funeral directing" as defined above.

(h) "Funeral establishment" means every place or premises devoted to or used for the care, arrangement and preparation for the funeral and final disposition of dead human bodies and maintained for the convenience of the public in connection with dead human bodies or as the place for carrying on the profession of funeral service.

(i) "Funeral service licensee" means a person who is duly licensed and engaged in the "practice of funeral service" as below defined.

(j) "Funeral service profession" means the aggregate of all funeral service licensees and their duties and responsibilities in connection with the funeral service, an organized, purposeful, time-limited, flexible, group-centered response to death.

(k) "Practice of funeral service" means engaging in the care or disposition of dead human bodies or in the practice of disinfecting and preparing by embalming or otherwise dead human bodies for the funeral service, transportation, burial or cremation, or in the practice of funeral directing or embalming as presently known, whether under these titles or designations or otherwise. It also means engaging in making arrangements for funeral service, selling funeral supplies to the public or making financial arrangements for the rendering of funeral services or the sale of such supplies.

(l) "Resident trainee" means a person who is engaged in preparing to become licensed for the practice of funeral directing, embalming or funeral service under the personal supervision and instruction of a person duly licensed for the practice of funeral directing, embalming or funeral service in the State of North Carolina under the provisions of this Chapter, and who is duly registered as such with the Board. (1957, c. 1240, s. 2; 1975, c. 571; 1979, c. 461, s. 6.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, inserted "arrangement" near the beginning of subsection (h).

§ 90-210.21. State institutions. — Nothing in this Article shall apply to or in any manner interfere with the duties of any officer of local or State institutions. (1957, c. 1240, s. 2; 1975, c. 571; 1979, c. 461, s. 7.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, deleted "nor shall be construed to apply to the burial of dead bodies of paupers or of inmates of State institutions who are buried at the sole expense of the State" at the end of the section.

§ 90-210.22. Required meetings. — The Board shall hold at least two meetings in each year at which examinations shall be given to qualified applicants for licenses. In addition, the Board may meet as often as the proper and efficient discharge of its duties shall require. Four members shall constitute a quorum. (1901, c. 338, ss. 5, 6, 7, 8; Rev., s. 4387; C. S., s. 5780; 1949, c. 961, s. 3; 1957, c. 1240, s. 2; 1969, c. 584, s. 2; 1973, c. 476, s. 128; 1975, c. 571.)

§ 90-210.23. Powers and duties of the Board. — (a) The Board is authorized to adopt and promulgate such rules and regulations for transaction of its business and for the carrying out and enforcement of the provisions of this Article as may be necessary and as are consistent with the laws of this State and of the United States.

(b) The Board shall elect from its members a president, a vice-president and a secretary, no two offices to be held by the same person. The president, vice-president and secretary shall serve for one year and until their successors shall be elected and qualify. The Board shall have authority to engage adequate staff as deemed necessary to perform its duties.

(c) The members of the Board shall serve without compensation provided that such members shall be reimbursed for their necessary traveling expenses and the necessary expenses incident to their attendance upon the business of the Board, and in addition thereto they shall receive per diem and expense reimbursement as provided in G.S. 93B-5 for every day actually spent by each

member upon the business of the Board. All expenses, salaries and per diem provided for in this Article shall be paid from funds received under the provisions of this Article and shall in no manner be an expense to the State.

(d) Every person licensed by the Board and every resident trainee shall furnish all information required by the Board reasonably relevant to the practice of the profession or business for which he is a licensee or resident trainee, and every funeral service establishment shall be subject to inspection by the Board at all reasonable times and shall furnish all information required by the Board reasonably relevant to the business therein conducted. Every licensee, resident trainee and funeral service establishment shall provide the Board with his or its current post-office address which shall be placed on the appropriate register and all notices required by law or by any rule or regulation of the Board to be mailed to any licensee, resident trainee or funeral service establishment shall be validly given when mailed to the address so provided.

The Board is empowered to hold hearings in accordance with the provisions of this Article and of Chapter 150A to subpoena witnesses and to administer oaths to or receive the affirmation of witnesses before the Board.

(e) The Board is empowered to regulate and inspect, according to law, funeral service establishments, their operation and the licenses under which they are operated, and to enforce as provided by law the rules, regulations and requirements of the Division of Health Services and of the city, town or county wherein any such funeral service establishment is maintained and operated.

(f) The Board may establish, supervise, regulate and control programs for the resident trainee. It may approve schools of mortuary science or funeral service, graduation from which is required by this Article as a qualification for the granting of any license, and may establish essential requirements and standards for such approval of mortuary science or funeral service schools.

(g) Schools for teaching mortuary science which are approved by the Board shall have extended to them the same privileges as to the use of bodies for dissecting while teaching as those granted in this State to medical colleges, but such bodies shall be obtained through the same agencies which provide bodies for medical colleges.

(h) The Board shall adopt a common seal.

(i) The Board may perform such other acts and exercise such other powers and duties as may be provided elsewhere in this Article or otherwise by law and as may be necessary to carry out the powers herein conferred. (1901, c. 338, ss. 1, 6, 7, 8, 11; Rev., ss. 4386, 4387, 4389; C. S., ss. 6779, 6780, 6783; 1949, c. 951, s. 2; 1957, c. 1240, s. 2; 1969, c. 584, s. 2; 1973, c. 476, s. 128; 1975, c. 571; 1979, c. 461, ss. 8, 9.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, substituted "funds" for "tax" in the second sentence of subsection (c) and substituted "150A" for "150" in the second paragraph of subsection (d).

§ 90-210.24. Inspector. — (a) The Board may appoint one or more agents who shall serve at the pleasure of the Board and who shall have the title "Inspector of the Board of Mortuary Science of North Carolina." No person is eligible for appointment as inspector unless at the time of his appointment he is licensed under this Article as a funeral service licensee.

(b) To determine compliance with the provisions of this Article and regulations promulgated under this Article, inspectors may

(1) Enter the office, premises, establishment or place of business of any funeral service licensee, funeral director or embalmer in North Carolina, and any office, premises, establishment or place in North Carolina where the practice of funeral service is carried on, or where that practice is advertised as being carried on, or where a funeral is

being conducted, to inspect the office, premises, or establishment, or to inspect the license or registration of any licensee and any resident trainee operating therein;

(2) Enter any hospital, nursing home, or other institution from which a dead human body has been removed by any person licensed under this Article or their designated representative to inspect records pertaining to the removal and its authorization; and

(3) May inspect criminal and probation records of licensees and applicants for licenses under this Article to obtain evidence of their character.

Inspectors may serve papers and subpoenas issued by the Board or any office or member thereof under authority of this Article, and shall perform other duties prescribed or ordered by the Board.

(c) Upon request by the Board, the Attorney General of North Carolina shall provide the inspectors with appropriate identification cards, signed by the Attorney General or his designated agent.

(d) The Board may prescribe an inspection form to be used by the inspectors in performing their duties. (1975, c. 571; 1979, c. 461, s. 10.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, rewrote this section.

§ 90-210.25. Licensing. — (a) Qualifications, Examinations, Resident Traineeship and Licensure. —

(1) To be licensed for the practice of funeral directing under this Article, a person must:

a. Be at least 18 years of age,

b. Be of good moral character,

c. Have completed a minimum of 32 semester hours or 48 quarter hours of academic instruction in a duly accredited college or university, or be a graduate of a mortuary science college approved by the Board,

d. Have completed 12 months of resident traineeship as funeral director, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this subsection, and

e. Have passed an oral or written funeral director examination on the following subjects:

1. Basic health sciences, including microbiology, hygiene, and public health,

2. Funeral service administration, including psychology, funeral principles and directing, and

3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies.

(2) To be licensed for the practice of embalming under this Article, a person must:

a. Be at least 18 years of age,

b. Be of good moral character,

c. Be a graduate of a mortuary science college approved by the Board,

d. Have completed 12 months of resident traineeship as an embalmer pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this subsection, and

e. Have passed an oral or written embalmer examination on the following subjects:

1. Basic health sciences, including anatomy, chemistry, microbiology, pathology and forensic pathology,
2. Funeral service sciences, including embalming and restorative art, and
3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies.

(3) To be licensed for the practice of funeral service under this Article, a person must:

- a. Be at least 18 years of age,
- b. Be of good moral character,
- c. Be a graduate of a mortuary science college approved by the Board,
- d. Have completed 12 months of resident traineeship as a funeral service licensee, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this subsection, and
- e. Have passed an oral or written funeral service examination on the following subjects:

1. Basic health sciences, including anatomy, chemistry, microbiology, pathology, forensic pathology, hygiene and public health,
2. Funeral service sciences, including embalming and restorative art,
3. Funeral service, administration including psychology, funeral principles and directing, and
4. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies.

(4) a. person desiring to become a resident trainee shall apply to the Board on a form provided by the Board. The application shall state that the applicant is not less than 18 years of age, of good moral character, and is the graduate of a high school or the equivalent thereof, and shall indicate the licensee under whom the applicant expects to train. A person training to become an embalmer may serve under either a licensed embalmer or a funeral service licensee. A person training to become a funeral director may serve under either a licensed funeral director or a funeral service licensee. A person training to become a funeral service licensee shall serve under a funeral service licensee. The application must be sustained by oath of the applicant and be accompanied by the appropriate fee. When the Board is satisfied as to the qualifications of an applicant it shall instruct the secretary to issue a certificate of resident traineeship.

- b. When a resident trainee leaves the proctorship of the licensee under whom the trainee has worked, the licensee shall file with the Board an affidavit showing the length of time served with the licensee by the trainee, and the affidavit shall be made a matter of record in the Board's office. The licensee shall deliver a copy of the affidavit to the trainee.
- c. A person who has not completed the traineeship and wishes to do so under a licensee other than the one whose name appears on the original certificate may reapply to the Board for approval, without payment of an additional fee.
- d. A certificate of resident traineeship shall be signed by the resident trainee and upon payment of the renewal fee shall be renewable one year after the date of original registration; but the certificate may not be renewed more than one time. The Board shall mail to

each registered trainee at his last known address a notice that the renewal fee is due and that, if not paid within 30 days of the notice, the certificate will be canceled. A penalty, in addition to the renewal fee, shall be charged for a late renewal, but the renewal of the registration of any resident trainee who is engaged in the active military service of the United States at the time renewal is due may, at the discretion of the Board, be held in abeyance for the duration of that service without penalties.

e. All registered resident trainees shall report to the Board at least every three months during traineeship upon forms provided by the Board listing the work which has been completed during the preceding three months of resident traineeship. The data contained in the reports shall be certified as correct by the licensee under whom the trainee has served during the period and by the licensed person who is managing the funeral service establishment. Each report shall list the following:

1. For funeral director trainees, the conduct of any funerals during the relevant time period,
2. For embalming trainees, the embalming of any bodies during the relevant time period,
3. For funeral service trainees, both of the activities named in 1 and 2 of this subsection, engaged in during the relevant time period.

f. To meet the resident traineeship requirements of G.S. 90-210.25(a)(1), G.S. 90-210.25(a)(2) and G.S. 90-210.25(a)(3) the following must be shown by the affidavit(s) of the licensee(s) under whom the trainee worked:

1. That the funeral director trainee has, under supervision, assisted in directing at least 25 funerals during the resident traineeship,
2. That the embalmer trainee has, under supervision, assisted in embalming at least 25 bodies during the resident traineeship,
3. That the funeral service trainee has, under supervision, assisted in directing at least 25 funerals and, under supervision, assisted in embalming at least 25 bodies during the resident traineeship.

g. The Board may suspend or revoke a certificate of resident traineeship for violation of any provision of this Article.

h. Each sponsor for a registered resident trainee must during the period of sponsorship be actively employed with a funeral establishment. The traineeship shall be a primary vocation of the trainee.

i. Only one resident trainee may register and serve at any one time under any one person licensed under this Article.

(5) The Board by regulation may recognize other examinations that the Board deems equivalent to its own.

All licenses shall be signed by the president and secretary of the Board and the seal of the Board affixed thereto. All licenses shall be issued, renewed or duplicated for a period not exceeding one year upon payment of the renewal fee, and all licenses, renewals or duplicates thereof shall expire and terminate the thirty-first day of December following the date of their issue unless sooner revoked and canceled; provided, that the date of expiration may be changed by unanimous consent of the Board and upon 90 days' written notice of such change to all persons licensed for the practice of funeral directing, embalming and funeral service in this State.

The holder of any license issued by the Board who shall fail to renew same on or before January 31 of the calendar year for which such license is to be renewed shall be deemed to have forfeited and surrendered such license as of such date. No license so forfeited and surrendered shall be reinstated by the Board except upon application in writing within five years following such forfeiture and upon payment of all delinquent annual renewal fees plus a reinstatement fee; provided, however, that the Board may waive the provisions of this section for the holder of any license during the period of service in the armed services of the United States upon application within six months of severance therefrom.

All licensees now or hereafter licensed in North Carolina shall take courses of study in subjects relating to the practice of the profession for which they are licensed, to the end that new techniques, scientific and clinical advances, the achievements of research and the benefits of learning and reviewing skills will be utilized and applied to assure proper service to the public.

As a prerequisite to the annual renewal of a license, the licensee must complete, during the year immediately preceding renewal, at least five hours of continuing education courses, approved by the Board prior to enrollment; except that for renewals for calendar year 1980 the required length of study shall be a total of 15 hours in the three years immediately preceding January 1, 1980.

The Board shall not renew a license unless fulfillment of the continuing education requirement has been certified to it on a form provided by the Board, but the Board may waive this requirement for renewal in cases of certified illness or undue hardship or where the licensee lives outside of North Carolina and does not practice in North Carolina, and the Board shall waive the requirement for all licensees who have been licensed in North Carolina for a continuous period of 25 years or more.

The Board shall cause to be established and offered to the licensees, each calendar year, at least five hours of continuing education courses in subjects encompassing the license categories of embalming, funeral directing and funeral service. The Board may charge licensees attending these courses a reasonable registration fee in order to meet the expenses thereof and may also meet those expenses from other funds received under the provisions of this Article.

Any person who having been previously licensed by the Board as a funeral director or embalmer prior to July 1, 1975, shall not be required to satisfy the requirements herein for licensure as a funeral service licensee, but shall be entitled to have such license renewed upon making proper application therefor and upon payment of the renewal fee provided by the provisions of this Article. Persons previously licensed by the Board as a funeral director may engage in funeral directing, and persons previously licensed by the Board as an embalmer may engage in embalming. Any person having been previously licensed by the Board as both a funeral director and an embalmer may upon application therefor receive a license as a funeral service licensee.

(b) Persons Licensed under the Laws of Other Jurisdictions. —

(1) The Board shall grant licenses to funeral directors, embalmers and funeral service licensees, licensed in other states, territories, the District of Columbia, and foreign countries, when it is shown that the applicant holds a valid license as a funeral director, embalmer or funeral service licensee issued by the other jurisdiction, has demonstrated knowledge of the laws and regulations governing the profession in North Carolina and has submitted proof of his good moral

character, and either that the applicant has continuously practiced the profession in the other jurisdiction for at least three years immediately preceding his application, or the Board has determined that the licensing requirements for the other jurisdiction are substantially similar to those of North Carolina.

(2) The Board shall periodically review the mortuary science licensing requirements of other jurisdictions and shall determine which licensing requirements are substantially similar to the requirements of North Carolina.

(3) The Board may issue special permits, to be known as courtesy cards, permitting nonresident funeral directors, embalmers and funeral service licensees to remove bodies from and to arrange and direct funerals and embalm bodies in this State, but these privileges shall not include the right to establish a place of business in or engage generally in the business of funeral directing and embalming in this State.

(c) Registration, Filing and Transportation. — The holder of any license granted by this State for those within the funeral service profession or renewal thereof provided for in this Article shall cause registration to be filed in the office of the board of health of the county or city in which he practices his profession, or if there be no board of health in such county or city, at the office of the clerk of the superior court of such county. All such licenses, certificates, duplicates and renewals thereof shall be displayed in a conspicuous place in the funeral establishment where the holder renders service. It shall be unlawful for any railway agent, express agency, baggage master, conductor or other person acting as such, to receive the dead body of any person for shipment or transportation by railway or other public conveyance, to a point outside of this State, unless said body be accompanied by a removal or shipping permit.

(d) Establishment Permit. —

(1) No person, firm or corporation shall conduct, maintain, manage or operate a funeral establishment unless a permit for that establishment has been issued by the Board and is conspicuously displayed in the establishment.

(2) A permit shall be issued when:

a. It is shown that the funeral establishment has in charge a person known as a manager, licensed for the practice of funeral directing or funeral service,

b. The Board receives a list of the names of all part-time and full-time licensees employed by the establishment,

c. If embalming is to be performed on the premises, it is shown that a preparation room is maintained which satisfies the requirements set out in G.S. 90-210.27, and

d. The Board receives payment of the permit fee.

(3) Applications for funeral establishment permits shall be made on forms provided by the Board and filed with the Board by the owner, a partner or an officer of the corporation by January 1 of each year, and shall be accompanied by the application fee or renewal fee, as the case may be. All permits shall expire on December 31 of each year.

A penalty for late renewal, in addition to the regular renewal fee, shall be charged for renewal of registration coming after the first day of February.

(4) The Board may suspend or revoke a permit when an owner, partner or officer of the funeral establishment violates any provision of this Article or any regulations of the Board, or when any agent or employee of the funeral establishment, with the consent of any person, firm or corporation operating the funeral establishment, violates any of those provisions, rules or regulations.

(5) Funeral establishment permits are not transferable. A new application for a permit shall be made to the Board within 30 days of a change of ownership of a funeral establishment.

(e) Revocation; Suspension; Fines; Disclosure. —

(1) Whenever the Board finds that an applicant for a license or a person to whom a license has been issued by the Board is guilty of any of the following acts or omissions and the Board also finds that the person has thereby become unfit to practice, the Board may suspend or revoke the license or refuse to issue or renew the license, in accordance with the procedures set out in Chapter 150A:

- a. Conviction of a felony or a crime involving fraud or moral turpitude;
- b. Fraud or misrepresentation in obtaining or renewing a license;
- c. False or misleading advertising as the holder of a license;
- d. Solicitation of dead human bodies by the licensee, his agents, assistants, or employees; but this paragraph shall not be construed to prohibit general advertising by the licensee;
- e. Employment directly or indirectly of any resident trainee agent, assistant or other person, on a part-time or full-time basis, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular licensee;
- f. The direct or indirect giving of certificates of credit or the payment or offer of payment of a commission by the licensee, his agents, assistants or employees for the purpose of securing business;
- g. Gross immorality, including being under the influence of alcohol or drugs while practicing funeral service;
- h. Aiding or abetting an unlicensed person to perform services under this Article, including the use of a picture or name in connection with advertisements or other written material published or caused to be published by the licensee;
- i. Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed of;
- j. Violating or cooperating with others to violate any of the provisions of this Article or of the rules and regulations of the Board;
- k. Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies;
- l. Refusing to surrender promptly the custody of a dead human body upon the express order of the person lawfully entitled to the custody thereof;
- m. Knowingly making any false statement on a certificate of death;
- n. Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

(2) Where the Board finds that a licensee is guilty of one or more of the acts or omissions listed in subsection (e)(1) of this section but it is determined by the Board that the licensee has not thereby become unfit to practice, the Board may place the licensee on a term of probation in accordance with the procedures set out in Chapter 150A.

No person licensed under this Article shall remove or cause to be embalmed a dead human body when he has information indicating crime or violence of any sort in connection with the cause of death, nor shall a dead human body be cremated, until permission of the State or county medical examiner has first been obtained. However, nothing in this Article shall be construed to alter the duties and authority now vested in the office of the coroner.

No funeral service establishment shall accept a dead human body from a public officer (excluding the State or county medical examiner or his agent), employee or from the official of any institution, hospital or nursing home, from a physician or any person having a professional relationship with decedent, without having first made due inquiry as to the desires of the next-of-kin and of the persons who may be chargeable with the funeral expenses of such decedent. If any such kin be found, his or her authority and direction shall govern the disposal of the remains of such decedent. Any funeral service establishment receiving such remains in violation hereof shall make no charge for any service in connection with such remains prior to delivery of same as stipulated by such kin; provided, however, this section shall not prevent any funeral service establishment from charging and being reimbursed for services rendered in connection with the removal of the remains of any deceased person in case of accidental or violent death, and rendering necessary professional services required until the next-of-kin or the persons chargeable with the expenses have been notified.

When and where a licensee presents a selection of funeral merchandise to the public to be used in connection with the service to be provided by the licensee or an establishment as licensed under this Article, a card or brochure shall be directly associated with each item of merchandise setting forth the price of the service using said merchandise and listing the services and other merchandise included in the price, if any. When there are separate prices for the merchandise and services, such cards or brochures shall indicate the price of the merchandise and of the items separately priced.

At the time funeral arrangements are made and prior to the time of rendering the service and providing the merchandise, a funeral director or funeral service licensee shall give or cause to be given to the person or persons making such arrangements a written statement duly signed by a licensee of said funeral establishment showing the price of the service as selected and what services are included therein, the price of each of the supplemental items of services or merchandise requested, and the amounts involved for each of the items for which the funeral establishment will advance moneys as an accommodation to the person making arrangements, insofar as any of the above items can be specified at that time. The statement shall have printed, typed or stamped on the face thereof: "This statement of disclosure is provided pursuant to the requirements of North Carolina G.S. 90-210.25(e)."

(f) Unlawful Practices. — If any person shall practice or hold himself out as practicing the profession or art of embalming, funeral directing or practice of funeral service without having complied with the licensing provisions of this Article, he shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars (\$500.00) or imprisonment for not more than six months, or both, in the discretion of the court. (1901, c. 338, ss. 9, 10, 14; Rev., ss. 3644, 4388; 1917, c. 36; 1919, c. 88; C. S., ss. 6781, 6782; 1949, c. 951, s. 4; 1951, c. 413; 1957, c. 1240, ss. 2, 2½; 1965, cc. 719, 720; 1967, c. 691, s. 48; c. 1154, s. 2; 1969, c. 584, ss. 3, 3a, 4; 1975, c. 57; 1979, c. 461, ss. 11-21.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, rewrote subsections (a), (b), (d), and (e).

Cited in *Duggins v. North Carolina State Bd. of Cert. Pub. Accountant Exmrs.*, 294 N.C. 128, 240 S.E.2d 406 (1978).

§ 90-210.26. Good moral character. — Evidence of good moral character may be shown by the affidavits of three persons who have been acquainted with the applicant for three years immediately preceding the submission of the affidavit. (1979, c. 461, s. 22.)

§ 90-210.27

1979 CUMULATIVE SUPPLEMENT

§ 90-210.29

Editor's Note. — Session Laws 1979, c. 461, s. 2, makes this section effective July 1, 1979.

§ 90-210.27. Preparation room. — (a) Every funeral establishment if embalming is to be performed on the premises, shall maintain a preparation room which is strictly private.

(b) No one is allowed in the preparation room while a dead human body is being prepared except licensees, resident trainees, public officials in the discharge of their duties, members of the medical profession, officials of the funeral home, next of kin or other legally authorized persons.

(c) Each preparation room shall:

- (1) Contain one standard type operating table;
- (2) Contain facilities for adequate drainage;
- (3) Contain a sanitary waste receptacle;
- (4) Contain an instrument sterilizer;
- (5) Have wall-to-wall floor covering of tile, concrete, or other material which can be easily cleaned;
- (6) Be kept in sanitary condition and subject to inspection by the Board or its agents at all times;
- (7) Have a placard or sign on the door indicating that the preparation room is private;
- (8) Have a proper ventilation or purification system to maintain a nonhazardous level of airborne contamination. (1979, c. 461, s. 22.)

Editor's Note. — Session Laws 1979, c. 461, s. 2, makes this section effective July 1, 1979.

§ 90-210.28. Fees. — The Board may set and collect fees, not to exceed the following amounts:

Establishment permit	
Application	\$ 50.00
Annual renewal	50.00
Late renewal penalty	35.00
Courtesy card	
Application	35.00
Annual renewal	35.00
Out-of-state licensee	
Application	50.00
Embalmer, funeral director, funeral service	
Application	50.00
Annual renewal	50.00
Reinstatement fee	100.00
Resident trainee permit	
Application	35.00
Annual renewal	10.00
Late renewal penalty	5.00

(1979, c. 461, s. 22.)

Editor's Note. — Session Laws 1979, c. 461, s. 2, makes this section effective July 1, 1979.

§ 90-210.29. Students. — (a) Students who are enrolled in duly accredited mortuary science colleges in North Carolina may engage in the practices defined in this Article if the practices are part of their academic training and if the practices are under the supervision of a licensed instructor of mortuary science

or a licensee designated by the mortuary science college upon registration with the Board.

(b) The Board shall issue student permits upon verification of an applicant's enrollment in a duly accredited mortuary science college. (1979, c. 461, § 23.)

Editor's Note. — Session Laws 1979, c. 461, § 23, makes this section effective July 1, 1979.

ARTICLE 14.

Cadavers for Medical Schools.

§§ 90-212 to 90-216: Repealed by Session Laws 1975, c. 694, s. 1.

ARTICLE 14B.

Disposition of Unclaimed Bodies.

§ 90-216.6. Unclaimed bodies; disposition. — (a) All officers, employees, and agents of the State of North Carolina or of any unit of local government in the State, all undertakers doing business within the State, or any person, institution or agency otherwise having charge or control of an unclaimed body shall immediately notify and, upon the request of the Commission of Anatomy, deliver the dead body to the Commission. The Commission may take and remove the dead body itself in its discretion. No reward or fee shall be paid for such notification of the Commission. The person, institution, or agency having charge or control of an unclaimed body shall make reasonable efforts to notify an interested person of the deceased's death. The recipient to which the Commission of Anatomy distributes the body shall pay all expenses for the embalming, delivery and distribution of the body, and for the reasonable efforts made to notify such persons.

(b) As used herein, an unclaimed body shall mean a dead body which is not claimed for burial upon death and which, as appears to the person, institution or agency having charge or control of the dead body, will not be claimed for burial within 10 days of the deceased's death. The unclaimed body shall remain in the charge or control of the person, institution or agency for a period of 10 days unless the period is extended by the medical examiner or coroner having jurisdiction, or unless the period is shortened by the county director of social services upon his determination that the dead body will not be claimed for burial within 10 days of the deceased's death. Upon the expiration of such period, the person, institution or agency having charge or control of the unclaimed body will deliver it to the Commission at such time and place specified by the Commission or permit the Commission to take and remove the body itself.

(c) All dead bodies not claimed for burial within 10 days of the deceased's death may be received and distributed by the Commission of Anatomy pursuant to the authority contained in G.S. 143B-204 and this Article and in accordance with its rules and regulations. All interests in and rights to dead bodies unclaimed for burial within 10 days of the deceased's death and received by the Commission of Anatomy shall vest in the Commission.

(d) No autopsy shall be performed on an unclaimed body without the written consent of the Commission of Anatomy except that such written consent is not required for an autopsy performed pursuant to Article 15 of Chapter 90 or Article 21 of Chapter 130 of the General Statutes.

Mr. ECKHARDT. Mr. Kramer and Mr. Rodemeyer, we ordinarily swear the witnesses here. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. RODEMEYER. I do.

Mr. KRAMER. I do.

Mr. ECKHARDT. I might say to you at the commencement, particularly subsequent to Mr. Lent's statement, that we are concerned here not solely with the question of the funeral rule. As I understand it, you have approached the issuance of three rules—I believe four in all—that have come to this stage or beyond. You have some 18 rules in progress.

The subcommittee is not only interested in the funeral rule. Inasmuch as this rule is one that has been highly controversial and questions have been raised concerning the procedure, the subcommittee is interested in this rule not only on its merits, particularly here not on its merits, but on the basis of the procedure by which it was arrived at.

There has been considerable discussion in the House, some of which has been extremely critical of the Commission's procedure. Therefore, whatever may occur with respect to the funeral rule, we are concerned about what happened, in order that we may exercise our oversight function, respecting whether or not the Magnuson-Moss rulemaking process is adequate, whether it should be changed, whether it is being followed, and all of the matters having to do with oversight leading to improvement of process as well as possibly change in statutory provision.

I might say this to you in the beginning in order to give you something of a framework of some of the problems involved. I had something to do with drafting that rule along with Mr. Broyhill. I think we did put together probably the most due-process-oriented rulemaking procedure in any Federal statute. There are arguments both ways on that proposition.

When I went to conference committee on that bill I received a call from the then Chairman of the Commission, the previous Chairman, in which he said that we had provided too cumbersome a process and a rule could not be entered into for a period of about 7 years. I told him he should have gotten into that position at an earlier time because the last we had heard from the Federal Trade Commission at that time was that they wanted a rulemaking process. Frankly, that was before the octane rating case had come out favorably to the Federal Trade Commission.

I bring out this example to point out that there are arguments on both sides. On the one side, the rule may be too due-process oriented and too delaying in its form. On the other side, the Federal Trade Commission is in a position to make law, as Mr. Levitas would say, "bureaucratically" and without adequate consideration of the issues.

I raise these issues so that you know some of the points with which we are concerned. It is not altogether the merits of the funeral rule but the process and whether or not the objections to the Commission procedure are valid.

Now you may proceed.

TESTIMONY OF ALBERT H. KRAMER, DIRECTOR, BUREAU OF
CONSUMER PROTECTION, FEDERAL TRADE COMMISSION, AC-
COMPANIED BY MICHAEL L. RODEMEYER, MANAGING AT-
TORNEY, FUNERAL INDUSTRY PROJECT

Mr. KRAMER. I would like to read my prepared statement which deals in quite some detail with a number of the issues you have raised regarding the rulemaking proceeding. In addition, apart from my prepared statement, I am prepared to address generally some of the issues you have raised as well as to indicate what the Commission has done to improve its procedures, what we have learned about our rulemaking processes and where we still see a need for improvement. These are very fundamental and important issues which really do go to the heart of the rulemaking process.

I would like to go through the prepared statement and then, if I might, address generally the question of FTC rulemaking.

Mr. ECKHARDT. You may proceed.

Mr. KRAMER. Fine.

As you have indicated, Mr. Chairman, my name is Albert H. Kramer, and I am the Director of the Federal Trade Commission's Bureau of Consumer Protection. With me today is Mr. Michael Rodemeyer, who has been the managing attorney of the FTC's funeral program for the last year and a half.

We are obviously pleased to have this opportunity to appear before you today to review the FTC's proposed trade regulation rule on funeral home practices and, in particular, the rulemaking proceeding itself.

As I am sure you know, the Commissioners have yet to reach any final decision on the funeral rule proposal. For that reason, our statements today represent only the views of the Bureau and should not be construed as the views of the Commission or of any individual Commissioner.

The subject of funerals is an emotional one which lends itself to a high level of rhetoric. What we would like most to accomplish today, however, is simply to provide you with some perspective about both the proposed trade regulation rule and the rulemaking proceedings held under the procedures of the Magnuson-Moss Act of 1975.

Some of the witnesses who have appeared before you have testified about egregious abuses in the funeral industry. What you have heard is a small sample of the type of written complaints and testimony presented to the Commission during its 4-year rulemaking proceeding. While the record evidence in that proceeding shows that some of these practices you have heard about occur only infrequently, it also shows something else—that many abuses are not isolated acts committed by only a few unethical funeral directors.

In fact, perhaps the most significant consumer injury is caused by certain business practices used by the majority of funeral directors. These are not the type of practices which get headlines because they are not the kind of egregious ripoffs or frauds which you heard about last week.

They are, rather, subtle business practices which prevent consumers from getting the information they need to make their own choices. They are practices which shield the industry from the

healthy influence of price competition. They are the types of practices that prevent consumers from getting the information they need to make their own choices in order to be able to get the most out of their scarce purchasing dollars.

The proposed FTC rule has been substantially modified by the staff and the Commission since it was last reviewed by a subcommittee of the House. We believe in its present form the rule is a lean and simple prescription for price competition and informed consumer decisionmaking. It is based on three clear principles: First, that consumers are entitled to price information before they make buying decisions; second, that consumers should not be coerced through package deals into buying items they do not want—consumers should have a choice; and, third, that when representations are made, a basic standard of the marketplace; namely, that those representations must be truthful and should be adhered to.

These basic principles and the rule provisions which incorporate them are the final product of an extensive 4-year Magnuson-Moss rulemaking. This rule has been progressively tailored, narrowed and improved at each stage of the proceeding, reflecting the important learning process that occurs—and which we believe it was the purpose of the Magnuson-Moss Act to have occur—during the rule-making process.

I would like briefly to review the history of this proceeding because I believe it illustrates the manner in which the successive iterations in the rulemaking process make the issues progressively more focused, thereby enabling the Commission to arrive at a rule that does the minimum necessary to accomplish the optimum for consumers.

In late 1972, the FTC staff began a preliminary investigation into funeral and cemetery practices, responding to concerns about consumer abuses and antitrust problems which had been raised in popular works and congressional hearings. This initial investigation illustrated the Commission's new commitment to identify potential problems through policy planning rather than through exclusive reliance on consumer complaints. As you know, the latter practice had been sharply criticized in the late sixties and early seventies as tending to divert Commission resources into trivial matters.

A basic analysis of the funeral transaction was conducted as part of the initial investigation. This analysis indicated that there was a serious disparity in bargaining power between the funeral seller and the funeral buyer in an individual transaction, which existed because consumers were not knowledgeable about funeral practices or legal requirements, and because the purchase of funeral services often took place under extreme time pressure and the effects of grief.

The fact that funerals must be purchased by nearly 2 million consumers a year under such conditions, and the fact that it was one of the largest single purchases consumers must make, suggested that consumer losses could be significant if there were widespread abuses in the industry.

While this preliminary analysis showed that the transaction thus had a strong potential for unfairness and consumer injury, addi-

tional inquiry was necessary to determine if, in fact, there were widespread problems.

As part of an investigation authorized by the Commission in 1978, the FTC staff conducted a survey of funeral homes in the District of Columbia. The major finding of that study, and other studies which were inspired by the FTC survey, was that prices varied substantially from funeral home to funeral home and that price information was not being made available to consumers.

On the basis of this study and other information collected during the investigation, the Commission initiated a rulemaking proceeding in 1975 under the new Magnuson-Moss authority. At that time, the staff placed hundreds of documents from its investigative files on the public record. It then received initial written comments that exceeded 20,000 pages. These comments reflected every type of viewpoint.

Before the FTC hearings began, the National Funeral Directors Association sought an injunction in U.S. district court to halt the proceeding. After a hearing, the court denied NFDA's motion, finding no deficiencies in the FTC proceeding or in the procedures that had been followed.

The FTC rulemaking hearings were extensive. Fifty-two hearing days were held in six cities across the country from April through August 1976. More than 300 witnesses testified, representing a broad spectrum of interests. The hearings produced more than 17,000 pages of transcripts and more than 4,000 pages of exhibits.

Participation by the funeral industry itself was extensive. Representatives of 58 funeral trade associations testified, as did 42 individual funeral directors. NFDA's general counsel participated each day, presenting evidence and cross-examining witnesses. Counsel for other funeral trade associations also participated at several hearings.

Consumer groups, individual consumers, and a variety of other interested persons, such as State funeral licensing board representatives, other State government officials, investigative journalists, economists and experts in various fields, all appeared during the hearings. The witnesses were drawn from all across the country, representing both urban and rural areas.

After the hearings, interested parties were allowed to file rebuttal material challenging factual evidence already in the record. In August 1977, the presiding officer issued his report. The staff report, which analyzed the entire record including the presiding officer's report, followed 10 months later and recommended that the Commission issue a trade regulation rule.

However, the staff recommended dropping several provisions included in the initial rule proposal since the need for them had not been proven, and also recommended making numerous other changes reflecting suggestions which reduced compliance obligations or clarified the intent of the provisions.

Mr. Chairman, this is not in the prepared statement but I would like to note at this point that already you begin to see the winnowing process, the narrowing process, the learning process, that goes on during the rulemaking proceeding.

Even at the time of the staff report in 1978 there were already significant differences between the 1975 proposal and what the

staff was now recommending. These differences were based on what the staff had learned and based on the record evidence.

Furthermore, I should add, that as an appendix to the 1978 staff report there was included a memorandum developed by me and by staff which focused for public comment additional questions about how the rule could be further narrowed and about how compliance burdens could be further minimized.

Mr. ECKHARDT. Would you say that is similar to the process in Congress? A bill is introduced. It is sent to subcommittee. The subcommittee sends it to the full committee. Of course, then the full committee acts. After we have worked on this bill, the full committee will make substantial further changes. It is then changed on the floor of the House. The Senate may have an alternative approach to the question, and it goes through essentially the same process. The matter is determined on the floor of the Senate. Then a conference committee attempts to resolve the final result. The final result may be quite different from the original bill introduced.

Would that be comparable to the procedure that is accomplished in your rulemaking process?

Mr. KRAMER. Mr. Chairman, it would be comparable in many respects. I suppose I would draw one major distinction.

It is clearly the prerogative of the legislature to legislate as it sees fit in the best interests of the various groups and in the best interests of the democratic process which goes on as legislation is developed.

While our rulemaking process is similar to the legislative one in that successive reviews produce changes in the original rule proposal, we are under one further constraint. Every single thing we do, as you have indicated, must be supported by substantial evidence in the record and is subject to judicial review by a court to insure that we have provided all parties with both due process and fairness under the procedures as well as to insure that there is evidence that supports the actual result we have reached.

Mr. ECKHARDT. I might suggest, if you are looking at it in this way—and I really wasn't—I was only looking at the question of whether or not the initial promulgation of the rule is a predetermination of its final result or whether the initial determination of the rule is a structural base for considering the issue from that point forward.

Mr. KRAMER. I think it is exactly the latter. It is a structural base for considering the issue. It is a starting point for discussion. It is in many respects a discussion draft.

Mr. ECKHARDT. I am glad that you brought the other difference. As a matter of fact, I would suggest even another limitation on the Commission.

We did not grant general rulemaking power to the Commission. We granted rulemaking power within the confines of section 5 of the act.

Mr. KRAMER. That is correct.

Mr. ECKHARDT. Therefore, you must first enact a rule which will procedurally withhold examination by the court on review and which will also be within the constraints of your authority as delegated under section 5 of the act. Is that correct?

Mr. KRAMER. That is correct and the rule must also be supported by substantial evidence in the record. There are innumerable safeguards.

Indeed, the funeral rule proceeding as it went on from the point I have just described illustrates that the rule proposal was not locked in stone after the 1978 staff report, that the narrowing and sorting process continued even after the staff report had been issued and after I had written my cover memorandum.

Following the issuance of the staff report there was another period of public comment of 90 days during which time 1,600 new comments were attracted on the presiding officer's report and on the staff report. Many of those comments were extremely extensive. For example, the comment filed by the National Funeral Director's Association alone exceeded 600 single-spaced typed pages.

The 1,600 comments were then reviewed. Based on those comments, the staff, along with my office, proposed further modifications and an alternative set of rule recommendations. Therefore, the Commission had before it a full range of options at the time it sat down to consider this rule.

The recommendations which we ultimately recommended proposed a more limited rule which was intended to address the most pervasive and serious abuses while increasing the enforceability of the rule.

In February 1979, the Commission began the process of considering these alternative recommendations. It held 2 days of public meetings. During those 2 days consumer groups, industry representatives, and other interested parties were afforded an opportunity to sit down and discuss directly with the Commissioners—not with the staff but directly with the Commissioners—their views of the matters that had been presented to the Commission. They presented these views orally. They responded to questions. There was a give and take between the Commissioners and the various witnesses. Industry representatives stated that the rule was unnecessary; consumer groups complained that it did not go far enough.

The following month, the Commission met in a public meeting and discussed the staff's recommendations. At that time, the Commission approved in principle major revisions of the rule and directed the staff to prepare final draft language incorporating these decisions and to prepare a draft statement of basis and purpose.

Mr. Chairman, as is evident from this recitation, the Magnuson-Moss process is a lengthy process. It results in lengthy proceedings. But perhaps the most striking feature of this process is simply, as you have indicated, that it works and it works the way it was intended to work.

The main purpose of a rulemaking proceeding is to build an evidentiary record reflecting the knowledge, opinion, and experience of a broad range of interests. Procedures such as cross-examination and rebuttal allow parties to test facts and probe assumptions. Oral presentation before the Commission itself permits the Commissioners to confront the conflicting interests directly.

The result is that the final Commission action will be based upon an extensive record and a process that produces thorough and careful consideration after a progressive narrowing of the record to

focus on the most important issues. The Magnuson-Moss Act further insures the quality of the record by enabling a reviewing court to overturn a rule not based on substantial evidence, which, as you have indicated, is a standard that is higher than that required in most administrative rulemaking proceedings.

Much of the criticism directed at this particular rule has been directed at the initial rule proposed in 1975. This criticism would deny the fact that the rulemaking process has worked, as intended, to increase our understanding of the industry, and, in so doing, to narrow and focus the rule and to produce a rule more carefully tailored than the original proposal.

To illustrate this point we have prepared a summary chart comparing the 1975 initial proposal to the rule adopted in principle by the Commission in 1979. [See p. 137.] A more detailed description of the modifications made by the Commission is included as an appendix to our statement and provides the underlying basis for the summary chart.

As can be seen from the chart, many of the provisions containing burdensome "command and control" type regulations or imposing substantial compliance costs have been dropped or substantially modified. For example, provisions requiring the display of least expensive caskets and requiring those to be made available in several colors have been dropped. The provision on cash advances, which was viewed by the industry as particularly onerous, has been changed. It is no longer a prohibition against making a profit on such items. Instead, it now simply requires for a disclosure that a charge is being included for providing those items.

As modified by the Commission, the rule is an information-oriented proposal designed to restore price competition and to provide consumers with price and other information they need to make their own decisions.

As you indicated, Mr. Chairman, many of the other criticisms of this rule have been aimed at the proceeding itself. For example, industry representatives have criticized the lack of an oath requirement, certain restrictions on cross-examination, and the failure of the presiding officer to allow every person who desired the opportunity to testify the right to do so, although such a result would have paralyzed the hearings.

These criticisms appear to be based on the idea that the procedures of a Magnuson-Moss rulemaking should be far more judicialized than I believe the Congress intended us to make them, or than the courts have ever required us to make them. Both the Magnuson-Moss Act, which goes well beyond the procedural rights afforded in most administrative rulemakings, as you have pointed out, and the Commission's own rules of practice, which provide rights even beyond those in the act itself, are designed to afford parties complete procedural due process without turning the rulemaking proceeding itself into a full-scale trial.

Mr. Chairman, there is one additional issue I would like to address in my prepared remarks today, and that is the relationship of the FTC proposal to existing State laws and regulations concerning funeral practices.

While a good deal has been said about this rule as an unnecessary intervention in State affairs, the fact is that there is really

very little overlap between what the FTC proposes and what the States have done. Historically, State licensing boards have been concerned almost exclusively with matters such as funeral director licensing, education, and the protection of public health.

I want to emphasize that in those areas the FTC rulemaking leaves matters virtually unaffected. It leaves them entirely to the prerogative of the States.

However, the FTC rulemaking received wide publicity, the State boards did little or nothing to address potential problems in the commercial aspect of the funeral purchase. That is the focus of our rule. Even after 4 years of public scrutiny of these problems, only a small handful of States have adopted any provisions to help consumers get adequate price and other information before they make their purchasing decisions.

We have prepared a chart based on information recently obtained from State boards. It displays the number of States which have provisions comparable to those of the modified FTC rule proposal. A more detailed chart is also appended to these remarks. As can be seen, the laws of the majority of States contain, at best, only a few of the provisions contained in the proposed FTC rule.

Even where there is overlap, the FTC staff is unaware of any State provision which is inconsistent with the FTC proposals. In that event, the standard of conduct required by the State would also satisfy FTC requirements or, at a minimum, compliance with the FTC requirements would satisfy any standards imposed by the States.

Moreover, as I indicated earlier, the FTC rule does not address the issues with which the States have historically been concerned. It does not affect in any way matters of licensing, education, or public health. In fact, it specifically defers to State laws designed to protect public health in a number of instances.

In addition, the rule modifications made by the Commission reflect its determination that its role is to define minimal rules of fair dealing in the marketplace and to leave the primary role of funeral regulation to the States. The Commission dropped a number of provisions which covered egregious conduct already condemned by State law, such as are obtaining a body without permission, refusing to release a body on request, and using bait and switch sales tactics.

The Commission also dropped other provisions not currently covered by most State laws, leaving those matters to the States to handle in the ways the States may deem most appropriate for their own citizens. For example, the practices of steering consumers to more expensive merchandise or disparaging concern for price are significant problems which have been left to the States for remedy.

Finally, Mr. Chairman, the staff has strongly encouraged State and local enforcement of the minimal standards set out in the FTC proposal. In a recent speech before the Conference of Funeral Service Examining Boards, which is the umbrella organization of all of the State funeral licensing boards, Mr. Rodemeyer, the managing attorney for the FTC rule, stated our intent to encourage local and State enforcement and cited cooperation with the Arizona State Board of Funeral Directors and Embalmers as an example of how the Federal and State authorities could work together. In fact,

as members of this subcommittee are aware, the Arizona Board has endorsed the proposed FTC rule as an aid to local law enforcement. While the majority of State boards do not share this view, other State officials have supported the FTC rule, and we would expect a great deal of State-Federal cooperation.

Mr. Chairman, we are very sensitive to the charges of overregulation. However, I would submit that the proposed FTC rule on funerals does not deserve that charge. By providing basic information to the consumer, it is designed to help consumers help themselves in the marketplace. And making price information more readily available will help to stimulate price competition and lower prices for this basic necessity. By correcting the absence of information in the marketplace, the marketplace will correct itself through the natural process of competition.

Mr. Chairman, we appreciate the opportunity to appear before you and would welcome any questions. I would like to respond specifically to some of the points you have made, although I believe I responded generally to a number of them.

For example, you indicated that the industry abuses are rare. I think, as the testimony indicated here, that while the practices with which we are concerned are not the headline grabbing type, they are not rare. In fact, the selling of package funerals is the predominant, overwhelmingly predominant, industry practice. Failure to itemize items is the predominant industry practice. Generally speaking, the practices that the rule addresses are not rare at all.

Mr. ECKHARDT. Would the witness yield just a moment on that? I had not, myself, said they were rare; I said that it had been asserted that they were rare.

Mr. KRAMER. I understand. I understand these are charges that have been made. I want to respond to them directly because I think they warrant response if people are making them.

There is also a notion that the staff already had its mind made up before the evidence came in. As my testimony illustrates, the evolution of the rule—its evolution from where it started to where it ended—indicates that the staff's mind was not made up.

In this connection, much has been made of the remarks made by Chairman Pertschuk that there was a perception of a staff vendetta in the funeral proceeding. I want to respond to that charge directly, and I want to respond to it with a three-part answer.

First of all, Mr. Chairman, as you have so articulately pointed out, the rulemaking process itself is designed to screen out that kind of staff bias. It takes the Commission through successive iterations. It provides an independent opportunity for interested parties to have direct access to the Commission and to contradict any alleged staff bias. The process forces the rulemaking to progressively narrow down to the most important issues. It takes the Commission through a process in which the Commission must itself confront issues. Staff bias, if it exists, is winnowed out and is taken care of by means of these elaborate due process safeguards and by means of the court review that is also a part of the Magnuson-Moss Act.

Apart from the process itself being designed to insure that staff bias is winnowed out through safeguards such as the right of cross-

examination, the Commission itself has undergone some learning since it began this rulemaking. As a result, the Commission has issued specific instructions to the staff which helps us understand what our role as a staff is.

Our role is to develop a full record. It is to develop a record that excludes no evidence. It is to develop a record that provides the Commission a range of evidence that will allow the Commission to consider the full range of remedial options available to it, including doing nothing, as the Commission has decided to do in a number of instances.

Finally, I think it is necessary to focus on what the charge of staff vendetta means in this particular context. For all the charges about staff vendetta, there have been no serious allegations made that evidence was withheld, that parties were denied—with one exception to which I will return—the opportunity to testify or that parties were denied the opportunity to put evidence on the record.

Nobody has claimed that there has been evidence withheld, that anybody was squeezed out, that the staff lied to the Commission, or anything of that sort. To the extent that charges of staff vendetta have been made, there was adequate opportunity—ample opportunity—by the process itself through the comments and through the opportunity to speak to the Commissioners directly to contravene any alleged staff bias.

[Testimony resumes on p. 150.]

[The attachments to Mr. Kramer's statement follow:]

FTC FUNERAL RULE DELETIONS AND MAJOR MODIFICATIONS, 1975 - 1979*

1975 RULE VERSION

1979 RULE VERSION

1. UNRESTRICTED REMOVAL OF DEMAND
2. ENDORSEMENT WITHOUT PERMISSION
3. CASSETT FOR CREATION
4. CASH ADVANCE
5. REFUSAL TO RELEASE
6. LIBEL AND CREDIT INTERPRETATIONS
7. PRESERVATIVE VALUE CLAIMS
8. DISPLAY OF LEAST EXPENSIVE CASSETS
9. AVAILABILITY OF OTHER COLORED CASSETS
10. INTERFERENCE WITH CUSTOMER'S SELECTION
11. DISPARAGEMENT OF CONCERN FOR PRICE
12. PRICES OVER PHONE
13. AD DISCLOSURE
14. CASSETT PRICE LIST
15. CASSETT PRICE CARDS
16. BURIAL VAULT PRICE LIST
17. GENERAL PRICE LIST
18. ITEMIZED AGREEMENT FORM
19. PRIVATE RESTRAINTS ON PRICE ADVERTISING
20. PRIVATE RESTRAINTS ON NON-TRADITIONAL FUNERAL ARRANGEMENTS
21. PROHIBITION OF STATE LAWS RESTRICTING FUNERAL INFORMATION
22. RETENTION OF DOCUMENTS

1. UNRESTRICTED REMOVAL OF DEMAND
2. ENDORSEMENT WITHOUT PERMISSION
3. CASSETT FOR CREATION
4. CASH ADVANCE
5. REFUSAL TO RELEASE
6. LIBEL AND CREDIT INTERPRETATIONS
7. PRESERVATIVE VALUE CLAIMS
8. DISPLAY OF LEAST EXPENSIVE CASSETS
9. AVAILABILITY OF OTHER COLORED CASSETS
10. INTERFERENCE WITH CUSTOMER'S SELECTION
11. DISPARAGEMENT OF CONCERN FOR PRICE
12. PRICES OVER PHONE
13. AD DISCLOSURE
14. CASSETT PRICE LIST
15. CASSETT PRICE CARDS
16. BURIAL VAULT PRICE LIST
17. GENERAL PRICE LIST
18. ITEMIZED AGREEMENT FORM
19. PRIVATE RESTRAINTS ON PRICE ADVERTISING
20. PRIVATE RESTRAINTS ON NON-TRADITIONAL FUNERAL ARRANGEMENTS
21. PROHIBITION OF STATE LAWS RESTRICTING FUNERAL INFORMATION
22. RETENTION OF DOCUMENTS
23. COMPREHENSION

 Provision deleted
 Still pending before Commission
 Major modification
 Provision added after 1979

* The shaded table is double-width of the changes shown on this sheet.

**Federal Trade Commission
Funeral Trade Regulation Rule
Deletions and Major Modifications 1975-1979**

Revision	1975 Initial Rule Proposal	1979 Tentative Final Rule
1. Unauthorized Removal	Funeral directors may not take custody of the body without oral or written permission from family or person authorized by law.	<u>DELETED.</u> Commission determined that record should be maintained by funeral directors that it was consistent with public policy to leave all decisions regarding disposition of the body to existing state law and self-regulation by industry.
2. Release Without Explicit Permission	Funeral directors may not release or furnish other services or merchandise without oral or written permission from family or person authorized by law.	<u>MAJOR MODIFICATIONS.</u> 1979 Staff Report recommended that reference to other services and merchandise be deleted because price disclosures would be sufficient to protect consumers from abusive practices. The staff could not agree to industry proposal of 1979 Commission rule version if it was an exception which allowed obtaining permission if family cannot be contacted in reasonable time.
3. Casket for Cremation	Prohibits funeral directors and crematories from requiring a casket for cremation; funeral director must make cremation container available.	<u>STILL REMAINS.</u> 1979 staff recommendations supported that provision apply only to funeral directors who desire to offer cremation. Commission has observed that this provision pending state complete briefing by staff.
4. Cash Advances	Funeral director may not retain cash advance for cash advances for food, flowers, clergy honoraria. May not misrepresent amount on cash advanced to customer.	<u>MAJOR MODIFICATIONS.</u> Prohibitions entirely dropped. Commission determined that cash advances were not abusive practices. Funeral directors may charge whatever they wish as long as consumer is told. Revision reflects Commission decision to use information oriented, rather than command and control, regulatory approach.
5. Refusal to Release	Prohibits refusal to release deceased body to family upon request.	<u>DELETED.</u> Commission determined that releasing body to family upon request was not abusive practice and self-regulation by industry.
6. Discriminations of Legal and Cemetery Requirements	Prohibits funeral directors from making false or misleading statements about legal, cemetery or religious requirements. In addition, funeral directors must give written explanation of any charges and request copies of any laws requiring purchase of services or merchandise.	<u>MAJOR MODIFICATIONS.</u> 1979 Staff Report recommended elimination of disclosure form and of requirement that states laws be given upon request. Disclosures from states to be incorporated into written explanation of charges. Commission determined that disclosure of religious requirements because of enforcement difficulty concerns.
7. Preservative Value Claims	Prohibits funeral director from making any claims that natural decomposition of deceased human body can be prevented by embalming, caskets, or other burial containers.	<u>ENR.</u> Substantially similar to 1975 version.

1979 Tentative Final Rule

1975 Initial Rule Proposal

Provision

9. Display of Least Expensive Caskets

Must display three least expensive caskets in same general manner as others are displayed.

DELETED. Provision would have prevented merchandising techniques which steer bereaved consumers toward expensive caskets, described as "the 'three least expensive' approach." Commission was also responding to funeral director concerns about confusion and staff concerns about enforceability. Some staff felt that this provision was included in part by mistake.

10. Availability of Other Colored Caskets

Must notify customers that displayed caskets are available in other colors. Must obtain upon request, within 15 hours.

DELETED. (Same explanation as for number 9, above.)

11. Interference with Customer's Selection

Three separate subsections: (1) any not represent that merchandise is offered for sale unless offer is bona fide and without purchase of anything other than the product; (2) not use compensation method which discourages sale of any merchandise (commission sales); (3) may not discourage purchase of merchandise by offering gifts or other merchandise.

DELETED. 1978 Staff Report deleted provision on commission sales because practice not shown to be sufficiently common or harmful. Deletion of remaining provisions reflects Commission's belief that enforcement better suited to state and local efforts.

12. Disparagement of Concern for Price

May not suggest that customer's concern for price is improper or shows lack of affection for deceased.

DELETED. Provision would have prevented merchandising techniques which steer consumers toward expensive funeral arrangements. Deletion reflects Commission decision to use information rather than to make a decision that detection and enforcement better suited to state and local efforts.

13. Prices Over Phone

Funeral director must provide over telephone, upon request, accurate information regarding funeral director's prices.

SAME. Basic requirement of provision unchanged. However, language redrafted to clarify that rule is complied with by providing information from the general price list.

14. Ad Disclosure

Must display notice in all newspaper, radio, or television advertising, if any, that price information is available over the telephone.

STILL PENDING. 1978 Staff Report shortened required disclosure. Commission has reserved a decision on this section pending further staff analysis.

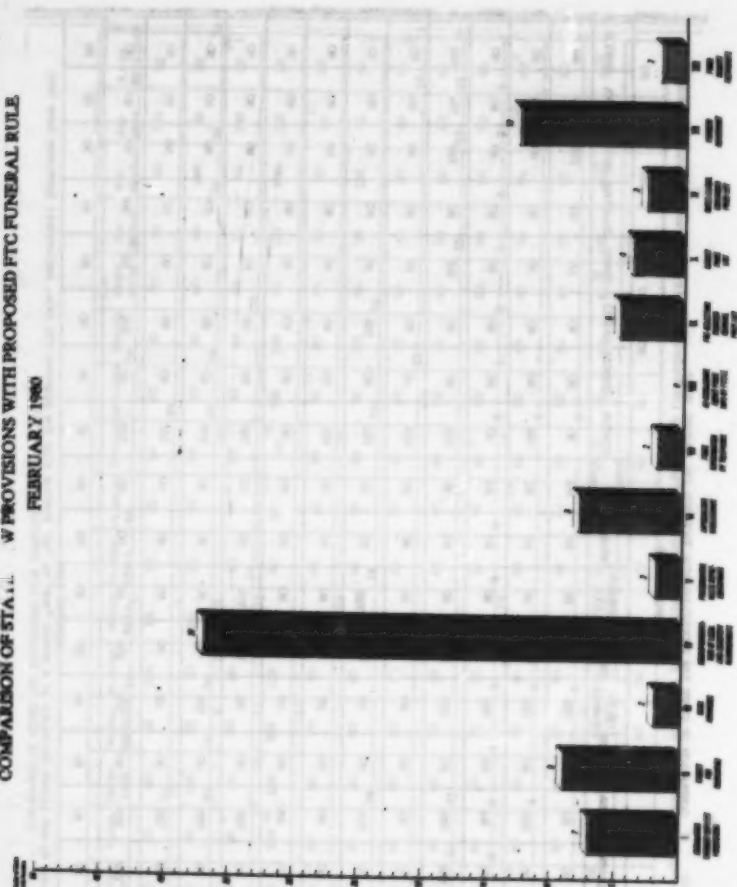
15. Casket Price List

If consumer desires to purchase casket, must be offered for sale before discussing sale of caskets.

SAME. Substantially similar to 1975 version.

Provision	1975 Initial Rule Proposal	1975 Tentative Final Rule
16. Barred Vault Price List	If consumer desires to purchase outer trial dress suit (sleeved in skirt), must be given price list showing all such merchandise before discounting sale.	SME. Substantially similar to 1975 version.
17. General Price List	Before general agreements are discussed, general director must give customer a general price list showing itemized prices for the major components of a typical funeral.	SME. MODIFICATION. New provision added in response to funeral industry officials acting in response to general director's clarification of the existing provision that general director must give customer a general price list (such as casket unit pricing), as long as rule also complied with by giving customer option to purchase on itemized basis.
18. Itemized Agreement Price	General director must give every customer a written final agreement showing goods and services selected by customer. Agreement must be itemized by major components of funeral.	SME. Substantially similar to 1975 version.
19. Prices Restraining on Price Advertising	Prohibits general directors from attempting to limit or restrict accurate price advertising.	SME. While Commission approved this provision in principle, staff was directed to reflect provision to limit and clarify the type of conduct covered.
20. Prices Restraining on General Agreements	Prohibits general directors from attempting to hinder the operation of non-union funeral competitors (e.g., cremation services) and consumer groups.	SME. (Same explanation as for number 19, above.)
21. Pro-emption of state laws restricting funeral information	Prohibits general directors from relying upon state law restrictions on price advertising.	SME. 1975 staff report recommended deletion of state restrictions on price advertising were known to be inapplicable to the funeral industry. This provision was developed to justify adoption of this provision.
22. Retention of Documents	General director must keep certain records for three years.	SME. Substantially similar to 1975 version.
23. Comprehension	(Not in 1975 version)	SME. Funeral directors cannot contract disclosure in relevant or discontinue their use of comprehension. Provision (proposed) relating to funeral law on format of disclosure (e.g., no small print, etc.).

COMPARISON OF STATE W PROVISIONS WITH PROPOSED FTC FUNERAL RULE
FEBRUARY 1980



•

[illegible]

* Because state law provisions do not always correlate in a simple "yes" or "no" fashion with the proposed FTC rule, commentary sometimes has been added as necessary.

FootnotesI. Embalming Without Explicit Permission

1. Does not require that consumers be asked explicitly whether or not they want embalming performed. However, does require that they be read/given a disclosure from which they would learn that they need not purchase embalming.

2. Does not require that consumers be asked explicitly whether or not they want embalming performed, although does require that some sort of permission to embalm be obtained. Inexplicit questions such as "Shall I make all the necessary arrangements?" would literally comply with provisions.

3. Proposed regulation would require explicit permission comparable to FTC rule. However, present regulations have no comparable provision.

II. Casket for Cremation

4. Does prohibit funeral director from requiring a casket for cremation. Does not specifically state that he must make alternative container available to consumers in such situations.

III. Cash Advances

5. Does not in any way prohibit funeral directors from taking undisclosed rebates or making undisclosed surcharges on cash advance items. Only reference to cash advances is requirement for separate billing of such items to consumer.

6. If a specific phrase designated in statute is used, statute prohibits charging consumer more than amount funeral director paid for cash advance items and requires separate billing

of such items. However, no protection unless funeral director desires to use aforementioned specific phrase. (Listed phrase is usually "cash advances".) FTC hearings show that several different phrases are in use by funeral directors, and could be substituted for phrase designated in statute.

7. Language of provision unclear. However, appears intended to require that funeral directors charge consumers no more than amount paid to third parties for cash advance items.

8. Requires itemized disclosure of cash advance amounts (and includes use of any term meaning cash advance), but specifically allows nondisclosure of existence of rebates or discounts.

9. No existing regulation. Proposed regulation would be same as those in footnote 6, above.

10. Prohibits funeral director from using the term "cash advance" if he receives discount or rebate. However, no restriction on funeral director from imposing his own surcharge on cash advances and also no prohibition on using other terms (such as "cash accommodations") even if discount or rebate is received. Requires separate billing of monies advances as "accommodation" to family.

IV. Misrepresentations of Legal and Cemetery Requirements

11. Provision generally prohibits fraud or misrepresentation in conduct of funeral director. Treated here as including specific prohibitions on misrepresentations of legal and cemetery requirements, although no such specific prohibitions stated.

12. Proposed regulation would require statements of legal and cemetery requirements to be complete and factual. However, present regulations have no provision comparable to FTC rule.

V. Preservative Value Misrepresentations

13. Provision generally prohibits making false, misleading or unsubstantiated claims as to the benefits or quality of funeral merchandise. However, it is important to note that the proposed FTC rule sets a standard about the types of claims which are in fact unfair or unsubstantiated, whereas the more general state provisions do not.

VI. Affirmative Disclosures to Prevent Misrepresentations

14. Requires at least one of the affirmative disclosures specified in the proposed FTC rule. However, no state listed here requires all or a majority of such FTC disclosures.

15. Requires funeral director to state in writing that all applicable statutes or absence thereof have been orally discussed. Does not require that consumer be given written disclosures regarding statutes or specify what must be said orally to consumer about statutes.

16. Requires explanation of state laws pertaining to cremation if consumer first expresses interest in cremation. However, does not specify a specific disclosure which must be made in such circumstances.

VII. Price Information Over Telephone

No footnotes

VIII. Ad Disclosure of Telephone Price Information

No footnotes.

IX. Pre-selection Itemized General Price List

17. Requires pre-selection itemized list, but does not specify categories.

18. If consumer requests itemized prices, funeral director must give out itemized price list.

X. Casket Price List

19. Does not require casket price list. Does require that display caskets have a card or brochures listing the service using that casket or the individual price of the casket if itemized pricing is used. (Separate casket price is required in a few states.) Several states require that all display merchandise have cards or brochures listing the unit price of the funeral service using that item or the individual price if itemized pricing is used.

20. Requires price card of each casket to list cost of casket and range or prices for all caskets sold. However, no list is required which would describe each casket sold and show its price.

21. Same as provision discussed in footnote 19, above, except that written price list showing all caskets is available if requested.

22. No specific casket price list. However, all caskets on sale must be listed individually on general price list.

XI. Outer Burial Container Price List

23. Requires price range for outer burial containers sold to be on general price list. However, no list is required which

would describe each outer burial container sold and show its price.

24. If consumer requests, must be given outer burial container price list. Existence of outer burial container list stated in disclosure on general price list.

25. No specific outer burial container price list. However all outer burial containers on sale must be listed individually on general price list.

XII. Itemized Agreement Form

26. Does not require itemized agreement. Generally requires that prices be broken down into three categories: (1) charges by funeral home (including casket and all services); (2) any supplemental items, and (3) cash advances. Does not require discounts for unused services or merchandise.

27. Does not require complete itemization. Does require that prices be broken down into the following categories: (1) professional services; (2) casket; (3) outside receptacle; (4) clothing, and (5) cash advances (with an itemization of any fees or charges).

28. Law requires itemized agreement but does not specify categories. (Optional model forms issued by Colorado state board show complete itemization.)

29. Same as provisions discussed in footnote 26, above, except does require discount for unused services and merchandise.

30. Does not require itemized agreement. Does require that prices be broken down into following categories: (1) casket; (2) other funeral director services and merchandise; (3) any supplemental items, and (4) cash advances.

31. No existing regulation. Proposed regulation would be same as those in footnote 29, above.

Mr. LENT. Mr. Chairman, I wonder if I could ask a question at this point.

My understanding was that Chairman Pertschuk said, and has so testified before the Senate Commerce Committee, that there was a vendetta. You are saying now that he said that there was a perception of a vendetta. If he said there was a vendetta, and he was the Chairman of the Commission, what were the facts?

Mr. KRAMER. Representative Lent, I do not recall the exact statement. You may very well be right that he said that there was a vendetta.

Mr. LENT. He is the Chairman of the FTC.

Mr. KRAMER. And he is the Chairman of the FTC.

Mr. LENT. You are trying to repudiate your Chairman.

Mr. KRAMER. I am not at all repudiating the Chairman. I am making a much different point, Representative Lent.

My point is this. Again I will summarize the three parts of my answer.

First, even if there was a vendetta, the rulemaking process insures, through due process safeguards, through the court review, through its progressive winnowing, through the opportunity it gives for direct oral communication with the Commission, and through the opportunity it gives to submit written comments directly to the Commission, that any staff bias that results from that vendetta is cured before a final rule is adopted.

In fact, although there has been a lot of talk about the procedures followed in this rulemaking, there has been very, very little suggestion that the rulemaking process did not result in a rule which is substantially limited and which moves a substantial distance from the original staff proposal. Therefore, even if there was a vendetta—and I am not disputing the Chairman, I want to emphasize that—then in fact the process itself through the elaborate procedural safeguards built into the Magnuson-Moss Act as well as through the safeguards the Commission has put into its own rules is designed to insure that staff bias is winnowed out.

Second, the Commission has made clear what the role of the staff is in developing a record that is full, that reflects all the evidence, and that lays all the options before the Commission.

Third and finally, in this particular case any staff bias which may have existed has not resulted—again with one exception which I will get to in a moment—in any showing that the staff excluded evidence, that people were not allowed to present evidence, or that there was material withheld from the record.

The one exception, which I will now discuss because it has been raised several times, is this: The presiding officer did not allow certain proindustry witnesses an opportunity to testify orally at several hearing sites. The presiding officer was forced to decline these requests to testify because the FTC was flooded with them. Over 200 requests were filed for the New York hearings in which only 80 witnesses could be heard. Over 600 requests were filed for the 11 days of hearings in Chicago. The similar wording used in many of the 400 proindustry requests indicated that the testimony they intended to offer was redundant to the testimony of people who had already been granted the right to request.

The presiding officer, faced with those circumstances of potentially redundant testimony from some 600 witnesses, invoked section 18(C)(1)(a) of the FTC act which empowers the Commission to allow the presiding officer to prescribe such rules as may tend to avoid unnecessary costs and delays. Acting under this authority, the presiding officer denied certain persons the right to testify orally, with the understanding that the statements of those persons who were not allowed to testify would be attached to the record as if given. Therefore, even in that one instance, Representative Lent, where people were allegedly denied the right to testify their statements were put on the record and were considered as part of the rulemaking record.

Again there was no exclusion of any evidence. Nobody was denied the right to present any evidence that they felt favored the rule. All that we are talking about here is a small point of not being able to accommodate some 800 people who desired to testify when there was not time to hear 800 people giving redundant testimony. That is what is involved.

Even with all the charges of vendetta and the alleged bias, there was not—and there is not—any showing that evidence was withheld or that people did not have an opportunity to get the evidence they wanted into the record.

Mr. LENT. Mr. Chairman, there is a vote on the floor in progress. I am going to have to leave.

As I understand it, the criticism was not so much a question of not being able to put evidence in. The objection was that evidence was added after the hearing was closed.

Mr. KRAMER. I am sorry?

Mr. LENT. The final record of the FTC on this rulemaking procedure added a great deal of evidence that was not before the Commission at the time of the hearing.

Mr. KRAMER. That is a separate charge. I believe what you are referring to is a charge that the staff report contained references to materials not on the record.

Mr. LENT. 161 different examples.

Mr. KRAMER. 161 different examples. Let me say a word about that because that is important.

There are literally thousands and thousands of citations in the staff report. The number 161 is a very small percentage of them. However, even with respect to that 161, it is very important to note the nature of the evidence that was added.

Using the 28 citation's specifically referred to by the NFDA as examples of this allegedly added evidence, I want to indicate to you what the added evidence was. Nineteen citation's were references to articles in funeral industry trade periodicals—in other words, matters of public record. One was a statistical publication of the Department of Commerce, another matter of public record. Two were to various State agency reports.

Let me say for the record that we will be glad to submit a complete breakdown of the 28 citations that were referred to by the NFDA. You will see that they were all matters of public record of which the Commission could have taken official notice, not evidentiary material.

Mr. ECKHARDT. Without objection, the record will be held open for that purpose. [See p. 170.]

Mr. KRAMER. I would like to respond to a couple of other criticisms, Mr. Chairman, the charges that witnesses were not sworn and that there was no examination of the staff.

Neither the Magnuson-Moss Act nor the Commission's rules require witnesses to be sworn. Indeed, we want to encourage witnesses to come forward. We do not believe it is appropriate in a proceeding of this sort where we are trying to gather information from citizens about problems they have had to require citizens to come down and be put under oath.

I should note that the Administrative Conference of the United States report stated with respect to this particular proceeding, "In retrospect, it is difficult to see how the presence or the absence of an oath would have made much difference either way."

In other words, Mr. Chairman, the presence or absence of an oath in a rulemaking proceeding is not significant where there is an opportunity for cross-examination and where there is an opportunity to submit additional evidence.

Mr. ECKHARDT. Do you require the oath in any cases?

Mr. KRAMER. We require it in adjudicative proceedings.

Mr. ECKHARDT. Do you require an oath of any of the witnesses in rulemaking?

Mr. KRAMER. No. We have never required an oath of witnesses in rulemaking proceedings.

As to the question of the examination of the staff, I think both the legislative history and the Magnuson-Moss Act itself make clear that there is no requirement that FTC staff be made available for cross-examination. The staff are not witnesses. The staff are people who are presenting evidence through other witnesses. It would be extraordinary to have counsel in a proceeding cross-examined.

Nobody sought the right to cross-examine counsel for the NFDA unless they were actually offering evidence or testimony. The notion that the FTC staff should be examined in the absence of the staff actually offering evidence is one that would be rather unique and rather foreign to American jurisprudence.

Obviously if we had a staff economist present an economic study, that staff economist would be subject to cross-examination. However, the staff conducting the rulemaking itself is counsel for the Commission. It would be extraordinary for them to be subject to cross-examination. They are not witnesses.

Mr. ECKHARDT. Is there any documentary evidence developed by the staff which is put into the record of the hearing?

Mr. KRAMER. There is documentary evidence developed by the staff which is put into the record of the hearing. Where that happens, it is authenticated by an authenticating witness.

Mr. ECKHARDT. If there is such documentation put in evidence, is someone always available for cross-examination who has compiled the information and who may speak relevantly and saliently to the question involved?

Mr. KRAMER. Where the staff itself compiles documentary evidence as opposed, for example, to putting an investigative report on

the record at the outset of the rulemaking, there would be an opportunity for an authenticating witness to be there, yes.

Mr. ECKHARDT. What I am getting at is this: Suppose material facts relating to the issue involved are presented as a piece of documentary evidence. Can you state that in every case there is either the original source—that is, if this quotes an economist with the staff or elsewhere—or else some person who may speak relevantly and with knowledge concerning that particular documentary evidence who is available for cross-examination?

Mr. KRAMER. To my knowledge, that has been the case subject to one possible exception. That possible exception may be where material comes in on rebuttal in the posthearing phase. However, when that occurs, the raw data is generally put on the record so that the parties will have access to it and can themselves independently scrutinize it.

Mr. ECKHARDT. I understand, of course, that some documentary evidence may be some writing of a person who may be deceased that is in the public domain and that has been scrutinized but may be arguable from several viewpoints, and other evidence may be brought in to support or rebut that testimony. In such a case, it seems to me that someone who has dealt with gathering the documentary testimony should be available to testify. Is that the case?

Mr. KRAMER. That normally would be the case, yes.

Mr. ECKHARDT. I think it should always be the case. There may be areas in which the court will not reverse you because of the somewhat permissive language of the statute. I want to tell you that when we framed that statute we had two concerns in mind and we had to draw a balance between these major concerns.

The one was that rules of this nature may be somewhat single-shot. They may be directed at a particular person or a particular industry or a particular activity. The same would be true of the Product Safety Commission's activities. We are moving into an area where rulemaking, once completed, affords little opportunity for review under an adjudicatory provision under section 554. In other words, once the rule is made it is either followed or it is breached. The question of whether or not the rule is reasonable is a matter that requires more consideration, we felt, than that involved in a 553 procedure.

On the other side of the picture, we also understood that such rules have a similarity to legislation in that they affect a multitude of people. They also have a similarity to legislation in that they are not altogether based upon those matters that are provable by fact. They ultimately must be determined on the basis of a value judgment.

Therefore, we tried to recognize that there would be, as you pointed out, say, 600 people who might want to testify personally. We provided a certain flexibility in the conducting of these hearings.

On the other hand, I feel that it was our intent that there be nothing on the record which is important and salient to the position in support of the rule that would merely appear as a document from a faceless witness. That may be a hard resolution to draw, but I do not think it is all that hard.

Mr. KRAMER. It is not all that hard. I think, Mr. Chairman, we have adhered to that distinction.

Obviously if we submit a major economic study—and this has happened in many rulemakings—if we submit a major economic study that contains a survey of consumer attitudes, we will have its authors available for cross-examination and we will put on the record the methodology used.

On the other hand, Mr. Chairman, if we have 3,000 complaint letters in the file and we put 3,000 complaint letters in the record, we do not call all 3,000 writers of those letters as witnesses and make them available for cross-examination.

Any party who feels that any of those letters is false can petition for a subpoena of the person writing the letter and, indeed, can cross-examine them. We do have procedures which allow parties to get subpoenas in a rulemaking. Certainly we would not subject a person's written letter of complaint to cross-examination, unless it were going to be a major exhibit. We would not subject 3,000 Americans to automatic cross-examination just because they had written letters of complaint.

Mr. ECKHARDT. I do not think that was intended.

I think this probably summarizes our views. This was in the discussion on the floor of the House in December 1974; Mr. Moss was then chairman of the subcommittee from which the bill came and the person whose name is in the Magnuson-Moss Act:

It is the intent and the understanding of the gentleman from California that the words "commenting orally" were intended to be descriptive and not limiting. In other words, the Commission could authorize cross-examination of written submissions if it determined that it was appropriate.

I went a little further than that in my comment. I then said, addressing Mr. Moss on the floor:

For instance, if the Commission should rely in making a rule on a written report of one of its agents and cross-examination of that agent is necessary for fair determination of the rulemaking procedure taken as a whole, the Commission should make that agent available for cross-examination. Am I correct in this?

Mr. Moss responded:

The gentleman is indeed correct.

Mr. BROYHILL of North Carolina. Mr. Speaker will the gentleman yield?

Mr. Moss. I yield to the gentleman from North Carolina.

Mr. BROYHILL of North Carolina. I thank the gentleman for yielding. I concur in the gentleman's interpretation.

Then I said:

Each of us was on the conference committee, and I understand that to be in accord both with the language and with the discussion there. Is that not correct?

Mr. Broyhill agreed.

The language of the act itself provides for cross-examination as a general proposition, but it permits such cross-examination to be conducted either personally or through the Commission, depending on the Commission's judgment. It permits the Commission to determine whether there are disputed issues of material fact necessary to be resolved. It also has certain other language giving the Commission some leeway in providing workable and appropriate proceedings based upon the exigencies of time and the nature of the process.

However, it seems to me that the essential provision is such cross-examination of persons as the Commission determines to be

appropriate and, two—and I think this is important—to be required for a full and true disclosure with respect to such issues.

When you curtail cross-examination, it must not be to the point where, with respect to salient issues involved that may reach the Commission by documentary evidence, cross-examination is so curtailed as to prohibit a full and true disclosure with respect to such salient issues.

That is the way I would read the language. Do you disagree on that?

Mr. KRAMER. Mr. Chairman, I agree that is what the law requires. In fact, I would say not only have we adhered to that standard, but that we have gone further, in some cases allowing cross-examination beyond that.

Certainly in this rulemaking proceeding, in the funeral rulemaking proceeding—and I feel confident in every one of them—any major study such as the type you cited in the colloquy from which you have just read was subjected to cross-examination. Any major document that was necessary to the resolution of a material and disputed fact was subjected to authentication and cross-examination by a developing witness.

Mr. ECKHARDT. We will hear from the other side, too, on this question.

Mr. KRAMER. I would be surprised if that is an issue in dispute.

Mr. ECKHARDT. Have you completed your statement?

Mr. KRAMER. I can go on and address the other statements, but it may be best if I just take questions.

Mr. ECKHARDT. There have been complaints of ex parte communication between the staff and the Commission during the rulemaking proceeding. Could you tell us what your rules on this point were?

Mr. KRAMER. Yes, I can, Mr. Chairman.

The Commission's rules allow the staff to have contact with the Commission and to consult with the Commission during the rulemaking proceeding. As you have pointed out, this is essentially a legislative proceeding. The Commission is entitled to receive the deliberations of its staff.

On the other hand, the rules are very clear that to the extent that staff in any manner provides factual evidence that is not already contained on the record, that information must be put on the record and other parties must be notified that information has been provided to the Commission.

The Commission is allowed to consult with the staff. It is allowed to have the staff assist it in digesting the record. It is allowed to probe the staff about particular matters. It is allowed to have the staff provide elaboration on certain points that may concern the Commission. However, the Commission's rules specifically prohibit the staff from conveying to the Commission any factual information, from whatever source, if that information is not on the rulemaking record and has not been the subject of public comment.

The oral communications between staff and the Commission under the existing rules provide the Commission with the benefit of being able to engage in internal deliberations in its decisionmaking processes. By analogy if these kinds of deliberations were reduced to writing, they would be exempt from disclosure under the

Freedom of Information Act as reflecting internal deliberations and the process of decisionmaking as opposed to being factual information or evidence which the parties do not have an opportunity to comment on or which the Commission is basing its decision upon, and which is not on the rulemaking record.

We believe this procedure is in accord with the Magnuson-Moss Act and that it is fully in accord with the most stringent of the court decisions on this issue; namely, the Home Box Office ruling and the Hercules ruling by the U.S. Court of Appeals for the District of Columbia Circuit.

We have adhered more than strictly to those guidelines. Staff does not engage in sending any factual information to Commissioners. It engages primarily in helping the Commission in its deliberations to resolve issues. Even most of this activity is conducted in sunshine meetings, which are open meetings.

We believe we fully are in accord with the law. But we also are fully in accord with the notion of continuing to treat Magnuson-Moss rulemaking as essentially a legislative policy proceeding.

Mr. ECKHARDT. How long a period of time does it take to actually compile the record upon which the rule ultimately will be made? Can you tell us that with respect to the funeral rule?

Mr. KRAMER. It took 4 years. We have done better in recent rulemaking.

Again, I would be glad to submit for the record a list of some of the specific reforms which we have instituted in order to attempt to speed up that process. You are familiar with some of those.

I believe that last year, and possibly even earlier than that, during oversight hearings Chairman Pertschuk cited the procedures we have attempted to follow in the R value rulemaking, where we dispensed with the designated issues, and the children's rulemaking proceeding, where we have set up a one-stage legislative hearing and then a subsequent adjudicative hearing on so-called adjudicative facts. Therefore, we are taking a number of steps to attempt to speed up the rulemaking process.

However, the 4-year period for the funeral rule is not atypical. The used car rule, which I am sure you also have heard about, initially was begun, I believe, in 1974 and republished as a Magnuson-Moss rule in 1975. It is not yet promulgated. Final comments on that rule were not transmitted to the Commission until late 1979.

There is ample opportunity for parties to put evidence on the record.

Mr. ECKHARDT. Mr. Lent?

Mr. LENT. Thank you, Mr. Chairman.

Mr. Kramer, on page 3 of your testimony you seek to justify why you began the preliminary investigation into funeral and cemetery practices. You indicate the FTC was responding to concerns "about consumer abuses and antitrust problems which had been raised in popular works and congressional hearings."

Are you referring, by any chance, to the congressional hearings in 1964, the Senate antitrust hearings?

Mr. KRAMER. That would be one of the things to which we are referring, yes.

Mr. LENT. Were there any other hearings? We have not been able to find any other hearings where this question was looked into?

Mr. RODEMEYER. No, Congressman Lent, those are the congressional hearings to which we were referring.

Mr. LENT. All right. You are referring to the 1964 Senate Antitrust Subcommittee hearings on funeral industry practices. Is that right?

Mr. RODEMEYER. Yes.

Mr. LENT. You are citing those hearings along with popular works—and we will get into that in just a minute—as your justification for instituting this rulemaking proceeding and preliminary investigation leading up thereto. Is that correct?

Mr. RODEMEYER. Well, Congressman, at the time of the preliminary investigation there was no idea that it was necessarily going to lead to a rulemaking proceeding. However, those were the congressional hearings, yes, sir.

Mr. LENT. Let me ask you this: You are aware of the fact that at the conclusion of those Antitrust Subcommittee hearings the subcommittee decided against recommending legislation to regulate the industry?

Mr. RODEMEYER. Yes, sir.

Mr. LENT. They in no way indicated, did they, that they wished the Commission to take action of a rulemaking nature?

Mr. RODEMEYER. No, sir, they did not.

Mr. LENT. Yet you say these hearings somehow stimulated your investigation?

Mr. KRAMER. They were involved in stimulating the investigation, Representative Lent. I would like to elaborate a little bit.

There is allusion to other works there. We can discuss those in a moment.

In the middle sixties the Commission refused to issue guides for the funeral industry. It basically said, largely in response to the industry and in part in response to those congressional antitrust hearings to which you were alluding, that this was an area where the industry ought to attempt to self-regulate.

Mr. LENT. Who said that?

Mr. KRAMER. The Commission. Indeed, there was some attempt—

Mr. LENT. What came out of the hearings that stimulated the investigation?

Mr. KRAMER. The point is that there were hearings that indicated there were problems. There was nothing—

Mr. LENT. Let me read a statement by Senator Sam Ervin who was a member of that hearing. He may have even chaired it, I don't know. He is one of the Senate's great constitutional experts. I will read a direct quote of Senator Ervin.

I heartily concur with the subcommittee's decision to refrain from recommending any legislation pertaining to the activities of funeral directors. It is my feeling that if there is any activity which is essentially local in nature that it is the burying of the dead, and that it should be regulated at the local level. Ideally, ethical principles should regulate funeral directors, but if they are unable to adhere to these principles then they should be regulated by State legislatures and not the Congress. By the same token, it is my feeling that the Congress should not make recommendations with regard to activities which are obviously local and intrastate in nature.

That is the language of Senator Ervin. In the intervening years following those hearing Congress has not seen fit to enact legislation or to suggest an approach differing from Senator Ervin's view.

I am curious. You cite these hearings and presumably some of the record that was compiled during those hearings as the basis for your investigation. Yet, when we inquired into those hearings and looked at what Senator Ervin said, everything he said mitigated against your going ahead with these hearings.

Why did you overrule what Senator Ervin had suggested?

Mr. KRAMER. Representative Lent, what the Commission did at that time—and those hearings were in 1964, if my memory serves me right—is that the Commission essentially said this is an area for industry self-regulation or for State regulation.

Eight years went by—8 years—and nothing happened in essence. The Commission urged the industry to begin to regulate itself, to work out guides, to do something. Nothing happened.

It was only after 8 years of inaction in an area where there was admitted abuse—and the Senate hearings did find abuse and the hearings did find unethical practices—it was only after 8 years of inaction that the Commission determined to open an initial investigation not necessarily—and this is important—designed to lead to rulemaking. They decided to open an investigation.

The investigation was a preliminary investigation into funeral and cemetery practices that could very well have resulted in cases against, and in fact did result in some cases against, chain funeral operators, funeral operators who were operating in more than one State.

The Commission in essence had waited for appropriate activity by the States or by the industry and then began an investigation not necessarily designed to lead to a rulemaking. It was only after that investigation revealed the widespread nature of what I have characterized as subtle but widespread abuses that the Commission made its determination that this was an appropriate area for rulemaking.

Even then, Representative Lent, when the industry came forward with a proposal for guides that the industry would itself adopt, the Commission attempted to work with the industry in order to strengthen those guides to insure that they would provide adequate protection for consumers. In fact, Commission staff engaged in several exchanges of correspondence with the industry. There were some discussions. In fact, they held a meeting with the industry.

Mr. LENT. OK. I do not want to cut you off but my time is somewhat limited.

You are saying that relied on Senate hearings. I have just read to you from Senator Ervin's statement, which makes it abundantly clear that he did not think the Federal Government had any business getting into the regulation of an industry that is essentially local in nature.

You say you also relied on popular works. What were some of those popular works? Are we talking about magazine articles, newspapers?

Mr. RODEMEYER. Yes; obviously one of the books that came out in the early sixties was Jessica Midford's book which raised a lot of issues and probably triggered some of the concerns in the sixties.

Mr. LENT. Are there any other popular works?

Mr. RODEMEYER. I could provide those for the record.

I know the other subcommittee that has looked into the funeral rule proceedings has explored this question with the initial managing attorney in some detail.

We do not have any problem in saying that this was not an investigation that was started because of consumer complaints or because members of the industry came to us or because other consumers came to us and complained of what was going on. A basic analysis indicating potential problems in the area is what led us to start the preliminary investigation to determine whether or not this potential for problems was actually creating problems out in the marketplace.

Mr. LENT. You say that you wanted the industry to regulate itself and that they did not. That is why you initiated this investigation.

Mr. RODEMEYER. Congressman, let me expand on that just a little bit.

We do not mean to say that the industry did nothing because that would not be true.

Mr. LENT. That is not true, but I understood Mr. Kramer a moment ago to say that between the time of those hearings in 1964 and the time this investigation was initiated the industry did nothing.

Mr. KRAMER. If I said "did nothing," then I should not have said "did nothing." What I meant was that the response was inadequate. We did not see a response that indicated there were steps being taken to prevent the significant abuses.

Mr. LENT. You are aware, are you not, that the NSM, the National Selected Morticians, requested the Commission at one point—I think it was back in 1964—to issue voluntary trade practice conference rules and submitted 27 specific rules for consideration. Is that true?

Mr. KRAMER. That is true.

Mr. LENT. Then again in 1974, prior to the commencement of your rulemaking proceedings, the NSM joined with the National Funeral Director's Association and petitioned the Commission to initiate a voluntary guide proceeding and to give consideration to a detailed set of guides. Is that true?

Mr. KRAMER. Those are both true.

Mr. LENT. What was the response of the Commission to that?

Mr. KRAMER. The response of the Commission staff was to indicate that the guides that were proposed were inadequate to respond to the needs that had been documented in part in the hearings to which you alluded and in part to the needs which had been uncovered by the various works that have been referenced and additional works which we will be providing.

We advised the industry at that time of the areas in which we felt the guides needed strengthening and of the areas in which we felt there had to be some additional work done before the Commission would be willing to adopt those as guides.

In fact, and I think Mr. Rodemeyer can provide additional detail on this, the Commission shortly after the rulemaking was initiated met with the industry. The Commission heard out the proposals of the industry. The Commission then decided to withhold final judgment on whether it should adopt guides or a rule until it had an opportunity to see what evidence was developed by the record.

The Commission did respond to the industry proposals for voluntary guides. The Commission did this prior to the initiation of the rulemaking and provided specific guidance—or at least the staff did—as to where the guides needed strengthening and why they were inadequate to respond to abuses. Subsequent to the initiation of the rulemaking the Commission had a meeting with the industry in which it heard out the industry on the question of guides. At that point the Commission made a determination that it would withhold final judgment until it had an opportunity to see the record and the evidence that was developed. The Commission was in contact with the industry during that period.

Mr. LENT. A year and a half after the second set of guidelines were submitted to the FTC, which you say were inadequate, on December 19, 1975, the NSM moved the Commission to convert the trade regulation rule proceeding to a guides proceeding. Isn't that true?

Mr. KRAMER. That is true.

Mr. LENT. There was no oral hearing on that. That request was denied.

Mr. KRAMER. As I indicated, Representative Lent, that request was denied. The Commission said it would reach a determination as to whether or not guides were adequate or a rule was necessary based on the evidence that was developed in the proceeding.

Mr. LENT. About the same time that the NSM put its code of good funeral practices into effect the National Funeral Director's Association, to which about two-thirds of the Nation's funeral directors belong, also promulgated its own code of ethics. Isn't that true?

Mr. RODEMEYER. Yes, sir, both associations did.

Mr. LENT. You have a policy, at least it is professed as I understand it, and it was professed to the Senate subcommittee, to the effect that where an industry responds to self-regulation the Commission will restrain its hand and not regulate.

Mr. KRAMER. That is correct.

Mr. LENT. Obviously, for one reason or another, you did not follow that policy in this particular case.

Mr. KRAMER. I would take issue with that, Representative Lent. I would take issue with it for this reason: The policy which we articulated to the Senate subcommittee and which is the Commission's policy is that where we see movement on the part of an industry which is of a self-regulatory nature and which addresses the abuses that need to be addressed, we will restrain our hand.

For example, the American Psychological Association had certain restrictive provisions in its code. The association moved to remove those provisions. We abandoned any effort to regulate that organization.

The American Veterinary Association had restrictions on advertising and on certain other forms of commercial practice. They

moved to abandon those restrictions. We proceeded to issue a report in which we recommended against rulemaking, and the Commission did not proceed in rulemaking.

The policy which we articulated to the Senate and which we do adhere to is that where there is industry self-regulation which addresses the significant consumer abuses, we will stay our hand.

As I have pointed out to you, the self-regulatory codes which were adopted by the funeral industry associations had been criticized by the staff. Staff pointed out significant inadequacies and deficiencies in those industry codes. Nothing was done to address the deficiencies and the inadequacies that were pointed out. We did not feel that it was proper, on the basis of self-regulatory codes which were not adequate to deal with the consumer problems that existed, for us to make a determination at that time, to rely on the industry code alone.

On the other hand, I have to emphasize that at the same time the Commission denied the request to convert the rulemaking proceeding into a guide, because of the inadequacy in those self-regulatory codes. It also said that it would withhold judgment on the issue of whether guides or a rule were needed until it could see the extent of the evidence in the record.

The Commission kept its mind open. This was consistent with the policy that we articulated to the Senate committee.

Mr. LENT. It looks to me, at least from the record, that the industry was trying to make a good faith effort to come up with some guides, which you rejected.

Let me ask you this: Did the Commission work with either of these organizations in trying to improve these guides which you felt were inadequate?

Mr. KRAMER. As I indicated to you, Representative Lent, we did submit comments to the industry on the areas where we felt the guides were deficient.

Mr. LENT. Did you meet with any of these people in the industry during this period?

Mr. RODEMEYER. The FTC staff did.

Mr. KRAMER. Yes. I did not personally because I was not there, but the FTC staff at that time did meet with the industry and did have discussions with them. Indeed, they submitted written comments on the industry guides.

Mr. LENT. You also say on page 3 that in addition to this congressional hearing, which we have discussed, and popular works, which means Jessica Midford, that you also initiated this investigation under a "new commitment to identify potential problems through policy planning rather than through exclusive reliance on consumer complaints."

We have established that the amount of consumer complaints was one ten-thousandths of 1 percent of the number of funerals that actually were conducted.

Can you tell us in what other rulemaking proceedings, save the funeral industry, has the Commission employed this new approach?

Mr. KRAMER. I can submit that information for the record. [See p. 203.]

I can tell you that generally the approach of searching out significant areas of consumer injury has been an approach that has

been followed generally in arriving at decisions to initiate rulemaking proceedings. It is often accompanied as well by a significant number of consumer complaints. Very often, where we have significant numbers of consumer complaints in an area, that is itself an indication of significant consumer injury.

Mr. LENT. Here you are telling us in your testimony that this investigation illustrated the Commission's new commitment to identify potential problems through policy planning rather than through exclusive reliance on consumer complaints.

When I asked you, Mr. Kramer, who is the Director of the Bureau of Consumer Protection in the Federal Trade Commission, to name one other rulemaking proceeding where your agency has employed this new approach, you cannot cite one for the record. Give me one.

Mr. KRAMER. Representative Lent, I will be glad to submit that information for the record.

The rulemakings which are now pending, a number of them, were based on this. We do generally have complaints as well. I would have to go back and look. That is all I can say.

Mr. LENT. All I can say is that I am somewhat distressed that your agency spent over 3 years—or I guess it was 4 years—and \$1.5 million of taxpayers' money on a rule whose only apparent justification was six or seven consumer complaints and Jessica Midford's best selling novel.

Mr. KRAMER. I do not think that is a true statement, Representative Lent. I do not believe it will be allowed to stand.

If you will read on in the testimony—

Mr. LENT. You gave me a couple other places to look. You gave me popular works. You gave me the congressional hearing, which I checked. You told me that the industry did not make any effort to work something out with which you could go along. You told me you have this new commitment to identify potential problems through policy planning rather than individual complaints.

We cannot find any other evidence that this new policy has been followed in any other industry. It almost seems as though you have singled out the funeral industry. It almost seems like Chairman Pertschuk's statement made on October 4, 1979, to the Senate Commerce Committee, "There was a vendetta." He did not say a "perception of a vendetta." He is the boss, and he said there was a vendetta. He may have been telling the truth. He may have really had a handle on what was wrong down at the FTC.

Mr. KRAMER. Representative Lent, I think if you go on to read the remainder of the paragraph, you will see there is a mention of policy analysis. That policy analysis indicated there were serious problems which would have precluded the generation of complaints.

For example, consumers are not knowledgeable about funeral practices or legal requirements. Purchases often take place under extreme time pressure and the effect of grief.

This is the largest single purchase made by consumers. There is a serious disparity in bargaining power between the funeral seller and the funeral buyer. There are a number of other considerations, other than the six complaints to which you have alluded, which formed the basis of the decision to go forward.

There was an analysis of the basic nature of the transaction. It is not fair to say, I believe, that the sole basis for going forward was either six complaints or the popular works alone. It was not based on any particular attempt to single out the funeral industry as a target. As I have indicated to you, it was the Commission, not the staff, which decided it was necessary to move from an investigation to a rulemaking proceeding.

Mr. LENT. Let me ask you one last question.

Your FTC jurisdiction is very, very broad.

Mr. KRAMER. That is correct.

Mr. LENT. It goes far beyond the funeral industry. There must be hundreds of examples where you receive more than six consumer complaints about an industry. Your resources are somewhat limited.

What are some of the other industries? Give me two or three. On what issue do you get the most mail at the FTC or in your Bureau?

Mr. RODEMEYER. Auto repair.

Mr. KRAMER. I was going to say auto repairs first. It varies from time to time. Mail order, credit transactions, and there are a number of issues that we have that are high in the area of consumer complaints.

Mr. LENT. You are working on those, I presume.

Mr. KRAMER. Yes, sir.

Mr. LENT. You have limited resources. I would hope you would funnel those resources into those other areas that consumers are really complaining about.

Isn't there something about children's breakfast food?

Mr. KRAMER. Yes.

Mr. LENT. Is that within your jurisdiction?

Mr. KRAMER. Whether or not the advertising is false is within our jurisdiction.

Mr. LENT. I get a lot of mail on that. You must get some of it there.

Mr. KRAMER. Yes, we do. We are working on that. We are trying to work in that area. We have a proceeding ongoing.

Mr. LENT. If you get a lot of complaints on a particular industry, you conduct an investigation.

Mr. KRAMER. That is correct.

Mr. LENT. But you did not do that in this case.

Mr. KRAMER. Let me give you another example if you would like one. I will give you one of an area where you would have few complaints but where you would have significant benefits from initiating a rulemaking.

Are you familiar with our eyeglasses proceeding, Representative Lent?

Mr. LENT. No.

Mr. KRAMER. The Commission essentially adopted a rule which declared it illegal to impose restraints on people who wanted to advertise the prices of eyeglasses and the availability of eyeglasses. The rule also required that the prescriptions for eyeglasses be released.

There are a number of States that have laws and there are a number of private associations, essentially medical associations, that have rules, which prevent such advertising.

Here is an area where you would get very, very few complaints. The reason is people would not understand there were private associations which prevent the marketplace from working, which prevent people from getting information about the fact that if eyeglasses were advertised they could get them more cheaply.

You also would not get complaints because people would not realize that if they insisted on taking their prescription from the person who performed their eye examination to an optician, that they could then get the eyeglasses more cheaply.

Again, based on this policy planning approach where you look at the fundamental nature of a transaction, you may have very, very few complaints because nobody is in essence being ripped off in any sense. All that is happening is that the marketplace is not working.

Mr. LENT. You mention the fundamental nature of a transaction. I think that is a good place to start always.

You mentioned eyeglasses. Eyeglasses are something that are sold, are they not, in interstate commerce? Presumably for the most part they are manufactured in one place and sold in another locality altogether.

Mr. KRAMER. Sometimes that is true and sometimes it is not. For example, most eyeglasses are ground from prescriptions right on the premises where you walk in with your prescription.

Mr. LENT. Does the FTC presume to regulate where only interstate commerce is involved?

Mr. KRAMER. The act provides that the FTC can regulate where something is in or affects interstate commerce.

Mr. LENT. OK. I think that is the most important point that we have made here today.

How many deceased bodies are transported across State lines? Do you have any statistics that you were able to develop?

Mr. RODEMEYER. Yes, there are statistics about it in the record.

Mr. LENT. What number of dead people are transported over State lines?

Mr. RODEMEYER. There is a significant number, Congressman. I do not have that information at my fingertips, but we can provide it for you. It is a fraction of the total, but it is a significant number transported across State lines.

Mr. LENT. Is it 5 percent?

Mr. RODEMEYER. I do not have that at my fingertips. I can provide it for you.

Mr. KRAMER. Congressman, at the same time there would be very few people who would cross State lines to buy eyeglasses. That does not mean that the business of manufacturing eyeglasses and prescribing eyeglasses is not in or affecting commerce.

Caskets may be shipped across State lines as is much of the equipment—

Mr. LENT. You left out one important word—"interstate" commerce.

Mr. KRAMER. Excuse me.

Mr. LENT. You only have jurisdiction over interstate commerce.

Mr. KRAMER. Excuse me. I did leave out that word.

Mr. LENT. I hope you know that. That is a point of law.

Mr. KRAMER. I understand that.

Mr. LENT. My son learns that in Constitutional Law I.

Mr. KRAMER. I understand that, Congressman.

The point I am making is that presumably a number of the goods used in funeral homes affect interstate commerce and the transactions affect interstate commerce, just as eyeglasses do.

Nobody has raised a jurisdictional question with regard to our ability to regulate eyeglasses. There is a separate issue which has been made as to whether we can preempt the States. That is not at issue here because we are not preempting the States. As we have gone to great pains to point out, everything in the funeral rule is consistent with State law. There is no necessity for pre-empting State law.

Mr. LENT. Thank you.

Mr. ECKHARDT. I am concerned about some of the questions that have been asked.

Do you feel that it is always the best measure of the depth of the offense, or the evil, as to the number of complaints? When I say that, I am thinking of this: It is somewhat personal. I have had at least one occasion to arrange a funeral. Incidentally, there was a mild offense there. It was not one that I would raise. It was that I was shown a number of coffins and was told that when I selected one or the other, then I would know the price of the funeral because the selection of the coffin would determine that price.

Truthfully, when I asked about it, the funeral home did let me distinguish between the cost of the funeral that would include only a graveside ceremony or in a church or home.

It was not the kind of situation that I was likely to complain about because, No. 1, it is a situation in which you are rather reluctant to quibble, or even to appear to quibble.

On the other hand, I suppose during my lifetime I must have had occasions to be offended in connection with automobile repairs at least 100 times. With respect to the question of moving disputes, I think I have had two occasions involved with movers—both unpleasant. However, if I complained both times, it would only be a fraction of the number of times I could have legitimately complained with respect to my automobile.

I just wondered if you simply count the number of complaints and decide therefrom as to which area is more important than others.

Mr. KRAMER. No, we do not, Mr. Chairman. In fact, that is the thrust of the remarks from which Representative Lent was quoting.

We are sensitive to the number of complaints. We often regard it as an indication of the amount of consumer injury.

We also recognize there may be areas, as you have indicated, where there is not a significant number of complaints but where there is significant injury. There are a variety of criteria that go into the decision whether or not we should become active in a particular area.

Mr. ECKHARDT. When you propose a rule, I think you have already testified that rule may be greatly changed for various reasons. It might be changed because in the proceeding you find that the rule is perhaps oppressive, impractical, goes too far, or that the industry is in the process of correcting abuses. Perhaps the very fact of the proposal may call for some restraint.

Do you feel that at the time the rule is proposed it will ultimately result in a final trade rule?

Mr. KRAMER. No, we do not. As I indicated, I cited one example where we had in fact proposed a rule and there was a response by the affected industry. Therefore, we decided we would not go forward with the rule. The recommendation to the Commission was to close out the matter without going forward any further in issuing the proposed rule.

Mr. ECKHARDT. Have you finalized the present funeral rule?

Mr. KRAMER. The present funeral rule is not finalized, no.

Mr. ECKHARDT. Can you finalize the present rule under the law today?

Mr. KRAMER. We could not as the law exists today. We could finalize the rule; we could not put it into effect because we are still operating under a continuing resolution which prevents us from making any rule effective during the pendency of that resolution.

Mr. ECKHARDT. That is the way I understand it. That is the way I understand the House proposal with respect to the authorization bill.

Even if the ultimate authorization bill as written in the House were passed, it would not remove from you jurisdiction and authority to consider the funeral rule or even to finalize it, but it would prevent you from using the funds under that authorization to put it into effect. Do I understand that correctly?

Mr. KRAMER. I do not remember the exact wording. Your interpretation sounds right to me. Yes, that is correct. The bill would prevent our expending any funds to enforce a proposed funeral rule.

Mr. ECKHARDT. You have been questioned as to what caused you to commence this procedure. Whatever may have caused you to commence the procedure, it seems to me absolutely clear that the Magnuson-Moss Act covered the activity which you engaged in in commencing that procedure.

As a matter of fact, I was very active in the drafting of that act. I do remember the testimony. I remember the history of the act.

We had been dealing in the committee with the question of how to deal with consumer abuses. Several different attempts were made. There was a class action bill which did not get very far. There was a uniform consumer act which purported to define a lot of specific areas of consumer offense. Although I think that was formulated in the bill, it was ultimately not heard.

Ultimately, our conclusion was that within the structure of section 5 there should be a clearer definition of what constituted an offense, so that it could be uniformly applied instead of on an ad hoc basis by enforcement proceedings. Therefore, we delegated authority to the Commission to make rules establishing with some definitiveness and uniformity that which constituted an unfair and deceptive practice.

As I recall, we never purported—as matter of fact, we relinquished—the idea of attempting to define precisely what constituted a consumer offense, but delegated the authority. I assume you acted in accordance with that general intent of the legislation in addressing the funeral question.

Mr. KRAMER. Yes, we did. As I have indicated to Representative Lent nobody questioned our jurisdiction to define with specificity unfair or deceptive acts or practices or suggested that we are not acting in accordance with the Magnuson-Moss Act, which we are.

Mr. ECKHARDT. You said that when you commenced this procedure you were not compelled and had not necessarily concluded that it would ultimately result in a final rule. Is that correct?

Mr. KRAMER. At the time we commenced the investigation we did not even necessarily have in mind a rule. Certainly at the time we proposed the rule we did not necessarily have in mind that it would result in a final rule.

Mr. ECKHARDT. When you commenced investigation of the subject matter, did you find any complaints concerning funeral operations?

Mr. RODEMEYER. Mr. Chairman, during the preliminary investigation the Commission received some complaints. I do not have the exact numbers. Certainly during the rulemaking we received approximately 1,000 or more consumer complaints, written complaints as well as from testimony.

Mr. ECKHARDT. Have you ever made a summary of the nature of those complaints?

Mr. RODEMEYER. Yes, sir, those would have been included in the staff report, which would have indicated the nature of the particular complaints.

Mr. Chairman, there is not a breakdown per se. The staff report is organized by sections of the rule which would discuss whether or not consumers complained about particular provisions of the rule.

Mr. ECKHARDT. I think we have the staff report. I presume in the ultimate report on our hearings such report may be analyzed with respect to the question of the number of complaints and the nature.

If there is anything that you would like to submit in the nature of a summary, that might be introduced. I would like to see it before we do because I do not want to overburden the report.

Mr. KRAMER. Fine. We will prepare something and send it to your staff for review.

Mr. ECKHARDT. You did have substantial complaints concerning the funeral industry in the process of the rulemaking.

Mr. KRAMER. Once the rulemaking proceeding got under way, we received a substantial number of complaints. That is correct.

Mr. RODEMEYER. Mr. Chairman, I would like to emphasize, though, that the evidence supporting the rule provisions does not rely exclusively on consumer complaints by any means. The evidence in the record consists of a number of surveys—by the industry, by consumer representatives, and by the FTC staff. They are surveys of consumers and their preferences and, more importantly, surveys of funeral industry pricing practices. That is the type of evidence, in addition to the individual testimony of the funeral directors and other experts in the area, which indicates that the practices addressed by the proposed rule do or do not exist and to what extent those practices are pervasive.

Mr. ECKHARDT. This subcommittee and the committee on which we all serve here perhaps deal with more of the regulatory agen-

cies—I think it deals with more regulatory agencies than any other body of Congress, including the bodies of the Senate.

In many of these agencies we are not necessarily trying to settle complaints, but we are trying to set up some orderly process by which there may be an umpire. For instance, the SEC is a perfect example. In many instances the brokers are not complaining against the dealers, or the brokers and dealers against the stock market or the stock exchange. The question is, What are the rules going to be and what is fair. What is going to establish a fair balance between various persons operating in the marketplace?

You have a little different situation. In that case the players are more or less of equal power. However, when you are dealing with an industry against a good number of individuals, it seems to me even more important to establish some rules of the game, even if you are not dealing with a bunch of ripoff artists.

Mr. KRAMER. I would agree wholeheartedly. You said it far more articulately than I did. That was the point I was attempting to make to Representative Lent in citing the remainder of the paragraph on page 3 of our prepared testimony where we attempted to set forth the nature of the inequity of the relative bargaining positions between the funeral home director and the consumer at the time when it is necessary to arrange a funeral.

Mr. ECKHARDT. Do I understand that your present rule simply requires that there not be a bundling of all costs, but that there be notification of items of cost in connection with funeral processes?

Mr. KRAMER. That is only partly correct. The rule does require that there be an itemized list of the cost of each of the various services. However, it does not prohibit a funeral home from offering package funerals at a package price if they want to. Indeed, the rule specifically allows this. The purpose of requiring the itemization and also allowing the package is to let consumers exercise choice, to let those consumers who desire less than the full package pay only for that portion of the funeral that they desire. However, nothing in the rule would prohibit a funeral home operator from adopting a package and from selling funerals as a package. We do not purport to be regulating what people can and cannot do.

The purpose of the rule is to maximize information given to people and to make sure once the information is there, people have the opportunity to decide what it is they want to purchase.

Mr. ECKHARDT. You mean this as if this were a menu that provided a full dinner, and then there was also a list of a la carte provisions—except in this case you would not have to get the full service—you might order elements of the service. You could not be compelled to take or leave a full service.

Mr. KRAMER. That is correct.

Mr. ECKHARDT. The second thing this does is prohibit unfair and deceptive advertising or, for instance, contentions that embalming will preserve the body indefinitely. Is that a part of the rule?

Mr. KRAMER. Yes.

Mr. ECKHARDT. Is there anything more to the rule than these two elements that I have described?

Mr. KRAMER. There are specific requirements. As I indicated in my testimony, the three principles to which we attempted to adhere are that itemized price information will be available, that

consumers will have a choice as to what they want, and that when representations are made they must be truthful. That is essentially it. That is what the provisions are directed to.

This translates into a number of specific requirements. For example, the notion that the consumer must be given price information translates into a requirement that a price list must be made available.

Mr. ECKHARDT. Has any representative, representing the funeral industry in some manner or general way, come to you and said, "Look, you don't have to make this rule. We intend to abide by a reasonable alternative, and here it is."? Have they ever done that?

Mr. RODEMEYER. No, sir, they have not. I think the industry representatives have indicated the modified rule is something that certainly is going to be easier for them to live with. They would possibly be willing at this point to discuss some kind of alternatives, but they have not approached us. There has been no discussion of that.

Mr. ECKHARDT. Instead of that, they approached us and got us to stop the authorization in the House. That is what actually happened.

Mr. Gore?

Mr. GORE. Thank you very much, Mr. Chairman.

I will be very brief. I understand that most of the questions have been covered.

I want to commend you and your associates at the FTC for the enormous amount of work that you did on this rule in trying to meet the industry's objections and in trying to perfect the rule as it worked its way through this long Magnuson-Moss procedure.

I know you understand there are many, many Americans who do not agree with the outcome of the vote in the House of Representatives. Because of those people, this issue will be addressed again. The Russo amendment does not last forever. It expires with the end of the fiscal year 1982. The issue will be joined once again.

I do not think your work will be for naught. I think this was a mild rule.

I was impressed with looking at the amount of work you all did.

I am not going to ask any questions at this point because you have been at the witness table for so long.

Do you have any more questions, Mr. Lent?

Mr. LENT. I have no further questions.

Mr. GORE [presiding]. Thank you very much.

Mr. KRAMER. Thank you very much, Mr. Gore. Thank you for your kind words.

[Testimony resumes on p. 206.]

[The following information was received for the record:]

FEDERAL TRADE COMMISSION

WASHINGTON, D. C. 20580

BUREAU OF
CONSUMER PROTECTION

1000 MAR 30 2 33

SUBCOMMITTEE ON
OVERSIGHT & INVESTIGATION March 31, 1980

Chairman Bob Eckhardt
Subcommittee on Oversight and Investigations
of the Committee on Interstate and Foreign
Commerce
2323 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Attached to this letter is the information which I promised to provide the Subcommittee during my testimony on February 21, 1980, regarding the Federal Trade Commission's funeral rule proceedings. The material includes responses to questions asked by you, as well as responses to questions asked by Congressman Lent and Congressman Gore.

We appreciate the opportunity to provide this information to the Subcommittee. Please feel free to contact me if there is any other information we can provide or if we can be of any other assistance.

Sincerely,

Albert H. Kramer

Albert H. Kramer
Director

REQUESTED SUPPLEMENTAL INFORMATION

During our appearance before the Subcommittee on February 21, 1980, we offered to provide additional materials to supplement our testimony. These materials were offered in response to concerns raised by Congressman Gore, Congressman Lent and Chairman Eckhardt.

1. Cross-Examination

Congressman Gore has asked us to respond to certain allegations that were made during the hearings before the Subcommittee. These allegations were made by David C. Murchison and Larry Williams, attorneys for National Selected Morticians (NSM) and the National Funeral Directors and Morticians Association (NFDMA), respectively. Their charges concerned the manner in which the cross-examination was conducted at the hearings on the proposed funeral rule. Essentially, there were two specific allegations: (1) funeral industry representatives were prohibited from cross-examining any of the witnesses whose testimony supported the rule and, (2) the entire cross-examination procedure was tainted by a "double standard" favoring the FTC attorneys.

(a) Denial of Cross-Examination

At the hearings before the subcommittee, Messrs. Murchison and Williams stated that attorneys representing the funeral industry were not allowed to conduct any cross-examinations of witnesses supporting the rule.

This assertion was so disturbing that we carefully reviewed the entire 17,000 pages of transcript to check this claim. Of the 115 non-consumer witnesses who testified in support of

the rule, funeral industry representatives personally cross-examined 114 of them. (There was no cross-examination of the remaining witness because the funeral industry representatives had left the hearing by the time he took the stand to testify.)

Nor was this cross-examination perfunctory. Indeed, the average length of an industry cross-examination of a witness was 20 pages, out of an average 34 pages of questioning.

The allegation is all the more difficult to understand since Mr. Williams personally cross-examined at least twelve witnesses.¹ While NSM representatives apparently did not choose to attend some of the hearings to question witnesses, representatives of the National Funeral Directors Association participated every day and questioned the overwhelming majority of witnesses. Other funeral trade association representatives also participated significantly in cross-examinations.

In light of these facts, it is clear that industry representatives had a full and fair opportunity to cross-examine witnesses supporting the rule.

¹ See testimony of the following witnesses: J. Todd, Arkansas Funeral Director, Tx. 8751, 8776-8790; J. Rosenthal, N.R.T.A., Tx. 8852, 8886-8889; C. Beattie, Memorial Society of Georgia, Tx. 8934, 8947-8951; R. Perry, Management Consultant firm, Atlanta, Georgia, Tx. 9145, 9179-9183; E. O'Reilly, Consumer Federation of America, Tx. 9262, 9242-9248; Mrs. J. Flanagan, Memorial Society of Pittsburgh, Tx. 9280, 9321-9325; Rev. J. Mathison, Tennessee clergyman, Tx. 9400, 9412-9446; E. Morgan, Arthur Morgan School, Tx. 9842, 9866-9877; B. Reeves, Georgia Cemetery Association, Tx. 10172, 10215-10222; H. Waxman, California State Representative, Tx. 10471, 10506-10512; L. Howbert, NRTA&AARP, Tx. 10725, 10748-10753; W.W. Chambers, Maryland Funeral Director, Tx. 11305, 11341-11356.

(b) Inconsistent Treatment Favoring FTC Staff

Mr. Murchison also testified that the Presiding Officer used a "double standard" favoring the FTC staff. He stated that whenever a witness supporting the rule testified, the Presiding Officer did not allow funeral industry representatives to question the witness directly. Instead, he required them to submit written questions which he would then pose to the witness. Mr. Murchison testified that, in contrast, when a witness opposing the rule testified, the FTC staff was allowed to question the witness directly.

Our review of the complete transcripts shows that industry representatives were treated the same as FTC staff. As noted above, industry representatives actually personally cross-examined 114 out of 115 non-consumer witnesses supporting the rule. Industry representatives were not required to submit any questions in writing for any non-consumer witness.

As for consumer witnesses, the procedure for cross-examination was set out by the Presiding Officer at the outset of the hearings and applied equally to both the industry representatives and the FTC staff. To make the hearings more informal and less adversarial, as envisioned by the Magnuson-Moss Act, the Presiding Officer determined that consumers who were going to testify from their personal experiences should not be subjected to direct cross-examination from the opposing party.² Instead, the Presiding

² The Magnuson-Moss Act authorizes the Commission to

(Footnote Continued)

Officer required the attorneys to submit proposed questions in writing, and then he would conduct the cross-examination himself.

In contrast with Mr. Murchison's claim, the facts show that this requirement applied equally to both FTC staff and industry representatives. Nineteen consumer witnesses testified in support of the proposed rule. Of these, seventeen were cross-examined solely by the Presiding Officer in accordance with the established procedure. In two instances, direct cross-examination by industry representatives was permitted.³

Ten consumer witnesses testified against the proposed rule. Of these, eight were cross-examined solely by the Presiding Officer in accordance with the established procedures. In one

² (Footnote Continued)

" . . . prescribe such rules and make such rulings concerning proceedings in such hearings as may tend to avoid unnecessary costs or delay. Such rules or rulings may include . . . (B) requirements that any cross-examination to which a person may be entitled under paragraph (1) be conducted by the Commission on behalf of that person in such manner as the Commission determines (i) to be appropriate, and (ii) to be required for a full and true disclosure with respect to disputed issues of material fact."
15 U.S.C 57(a)(c)(2).

³ In one instance, the Presiding Officer permitted counsel for the NFDA to directly question the witness on a specific paragraph of her statement. See Transcript of testimony of Rosemary Blakemore, at 5451, 5462. In the other instance, the witness was testifying on the basis of his knowledge of Jewish funeral practices and not on the basis of any personal experiences. Therefore, it was not necessary for the Presiding Officer to use the established procedure. See transcript of testimony of Staunton Flanders, at 4643, and 4644.

instance, direct questions from the FTC staff were permitted.⁴

As can be seen from this discussion, the procedures set out by the Presiding Officer applied equally to the FTC staff and industry representatives.

2. Non-Record Materials Cited in Staff Report

Congressman Lent expressed concern about allegations that the FTC staff included substantial non-record evidence in the staff report, thereby prejudicing the record against the funeral industry.

The non-record citations were not intended as, and will not be used as, evidence against the funeral industry. The Staff Report fully discloses the non-record citations and states clearly that they are not intended as evidence, but rather as background information which might be of interest to readers of the report.⁵ Each and every proposed rule provision is supported by independent record evidence. And the Commission long ago informed all interested parties that it would consider only the record evidence in making its determinations on the staff

⁴ In one instance, the witness was not testifying on the basis of any personal experience and, as in the situation noted in note 3 above, direct questioning was therefore permitted. Testimony of Edwin W. Chittum, transcript 14,017 and 14,029. In the other instance, a consumer group representative was allowed to ask one standard question directly after the Presiding Officer gave her permission to do so. Testimony of Jay Dee Harris, Transcript at 8076,8093.

⁵ See, e.g., FTC Staff Report on Funeral Industry Practices (June 1978) at 31, note 86 and 34.

recommendations.⁶

The limited purpose of the citations is shown clearly by the nature of the material cited. The great bulk of the materials consists of public information such as funeral industry trade publication articles, government reports, statistical information, and similar materials. For example, of the 28 specific citations discussed by NFDA in its comments filed with the Commission, 19 are references to articles in funeral industry trade periodicals; 1 is to a statistical publication of the Department of Commerce; 2 are to state agency reports; 1 is to an article in Business Week; 1 is to a book; 3 are to documents which were made available to the public on the funeral rule record; and 1 is to a publication published by NFDA itself.

In addition, the non-record citations are hardly a significant part of the staff report. The industry counts 161 citations to non-record materials out of the nearly ten thousand citations to specific record material found in the staff report.

We do not believe that limited references to public information, which is not used as evidence, in any manner prejudices the Commission's consideration of the funeral rule proceeding.

⁶ The Commission has stated that "with the exception of certain types of published materials such as law review articles, non-record information cited by or relied upon the staff in its report, or other parties in their comments, will similarly not be relied upon or considered by the Commission in [its decision on the proceeding]." Letter from Carol M. Thomas, Secretary to Thomas H. Clark, counsel for NFDA, January 16, 1979. A copy of this letter was placed on the public record of the funeral rule proceeding to inform all interested parties.

3. Basis for Initial Investigation

Congressman Lent also expressed concern about the origins of and basis for the Commission's initial decision to investigate funeral industry practices. We offered to provide the Subcommittee with additional information on this subject.

Funeral industry representatives have vigorously attacked the FTC's decision to investigate funeral practices. They argue that the FTC staff's initial decision to look at funeral practices to determine if an investigation was appropriate was improper because it was not triggered by consumer complaints. They also argue that, once the investigation was begun, it led inexorably to a pre-ordained conclusion that regulation was needed, even though the evidence gathered showed few consumer complaints.

This criticism reflects a basic misunderstanding of the FTC's procedures for investigation and of the informational sources considered by the Commission in determining whether a trade regulation rule may be appropriate.⁷ To assist the members in evaluating these charges, we will discuss the initial investigation in some detail.

(a) Staff Recommendation to Investigate

The beginning of any investigation is obviously an awareness of suspected violations of the law. Information about

⁷ In this regard, Congressman Lent asked about the Commission's policy planning approach to rulemaking. We will respond to this concern by a separate letter to Congressman Lent, and respectfully request that the letter be included in the record.

suspected violations may come from a variety of sources. Consumer complaints are, of course, important sources of information. Equally important, however, is information supplied by competitors, industry analysts, investigative journalists, legislative hearings, or experts in the field.

When suspected violations are detected, through any of these means, the FTC staff conducts a limited initial investigation to gather information needed to determine whether or not Commission action is appropriate. For example, the staff might review existing literature, examine prior Commission cases on the subject, and gather other publicly available information. However, Bureau review and approval must be obtained even at this stage if the inquiry involves more than a very minimal amount of staff time.

Such initial staff inquiries are clearly tentative and by no means represent any Commission determination that violations of the law have occurred or that FTC action is appropriate. Many such initial probes are closed with no subsequent full investigation. The very purpose of these probes is simply to identify whether the subject area is one in which abuses may exist.

In November, 1972, the FTC staff began such an initial inquiry into funeral practices. In a 19-page memo requesting authorization to conduct an initial investigation, the staff reviewed allegations about deceptive and unfair funeral practices made in popular works and Congressional hearings. The memo briefly discussed issues concerning the Commission's juris-

diction, the adequacy of state regulation, and whether the alleged practices violated the FTC Act. The memo recognized that many questions needed to be answered to determine whether any FTC action would be appropriate. Therefore, the memo requested authorization to conduct an initial investigation to answer three questions: (1) whether funeral abuses represented a significant problem; (2) to identify the most important problem areas and examine the propriety of Commission action regarding those problems; and (3) to weigh alternative courses of action and make recommendations as to the most appropriate Commission approaches to any major problems identified by the investigation.

Most of the criticism of the FTC's decision to investigate funeral practices is aimed at this initial decision to look at funeral practices. The thrust of the criticism is that such inquiries should be triggered only by consumer complaints. As we noted above, however, there are other equally important sources of information about suspected law violations. Moreover, reliance on consumer complaints as the exclusive measure of consumer abuse can be misleading where, as is often the case, consumers are unlikely to be aware of certain problems or are unlikely to report them.⁸

⁸In 1969, the Report of the American Bar Association to Study the Federal Trade Commission criticized the FTC for relying on "the vagaries of the passive mailbag approach." Report, at p. 40. The same criticism was leveled at the Commission by the Nader Report on the FTC, which noted that: "The FTC is not going to receive complaints from a person . . . who does not know what is happening to him. . . ." Congressional Record, January 22, 1969, p. E372.

(Footnote Continued)

Popular concern with practices in the funeral industry had been raised by Jessica Mitford's 1963 best-seller, The American Way of Death. Triggered by this interest, numerous other books and articles were published which dealt with consumer abuses in the funeral industry.⁹

In 1964, two Congressional subcommittees held hearings

⁸ (Footnote Continued)

In addition, Congressman Moss, one of the authors of the Magnuson-Moss Act, has stated his agreement with the Commission's rejection of the "mailbag" approach. In a letter to Congressman John Breckinridge, who had chaired hearings on the FTC funeral rule proposal in 1976, Congressman Moss wrote:

Your Subcommittee was apparently critical of the FTC for undertaking an investigation in the absence of a substantial number of "consumer complaints." I must frankly disagree with that general criticism because I believe strongly that there are a number of consumer problems where the victims will not know that they have been victimized, and, if anything, these problems are the more serious for that reason.

* * *

Our Subcommittee's extensive analysis of the Commission's resource allocation system led to the conclusion that the Commission needs a more systematic way of deciding its priorities. The number of complaints is one tool but should not be the exclusive one, especially where there are reasons why that number will not accurately reflect the extent of the problem.

(Letter, July 15, 1977)

⁹ A bibliography compiled by the staff in 1972 as part of its initial research is attached as Appendix I.

which addressed problems in the funeral and cemetery industries.¹⁰ In particular, the hearings before the Senate Judiciary Subcommittee on Antitrust and Monopoly focused on many of the pricing problems which later concerned the FTC. While the Subcommittee was sharply split on the issues, precluding final recommendations or action, three members, including the Chairman of the Subcommittee, Senator Phillip Hart, supported the need for federal action and specifically encouraged the FTC to become involved.¹¹

¹⁰ United States Congress, Senate Special Committee on Aging, Subcommittee on Frauds and Misrepresentations Affecting the Elderly, May 19, 1964.

United States Congress, Senate Special Committee on the Judiciary, Subcommittee on Antitrust and Monopoly, Senate Resolution 262, July 7, 8 and 9, 1964.

¹¹ In 1964, NSM proposed a set of voluntary practice guides to be adopted by the Commission. Referring to these proposed guides, Senator Hart stated during the hearings:

To me, the most encouraging fact developed in these hearings is the trade practice rules proposed to the Federal Trade Commission. While they -- by not having the force of law -- would not solve all problems involved, at least they would provide funeral directors a guide that is more in keeping with the operation of our free enterprise system.

But, why blink at the fact, some of the practices should be the subject not of rules, but of orders to cease and desist. I feel confident that the FTC will take a hard look at the situation.

Senate Comm. On the Judiciary, 88th Cong., 2nd Sess., Antitrust Aspects of the Funeral Industry, Hearings before the Subcommittee on Antitrust and Monopoly (1964) at 29.

After the hearings were concluded, the FTC declined to adopt the guides, in part because the NFDA strongly opposed them, making voluntary compliance impossible. The Com-

(Footnote Continued)

(b) Full investigation

The industry has also sought to portray the second phase of the investigation as an uncontrolled and meritless attack by the FTC staff. In fact, the two and a half year investigation was carefully structured and uncovered substantial evidence of industry-wide abuses even prior to the decision to commence a rulemaking proceeding.

Following the initial staff request for authorization, the FTC staff sought to obtain an overview of the industry and

11 (Footnote Continued)

mission also stated that the states should take the lead in the area. In the Committee print, Senator Hart commented on that decision:

FTC announced in November 24, 1964, that "the problems of the funeral industry can best be handled at local levels." It pointed out, further, that it was "arranging to cooperate with the States in taking such measures as may be indicated in dealing with industry problems."

Certainly, this program is not inconsistent with the adoption of trade practice rules. Trade practice rules in this area would benefit the public and the funeral industry and would be of substantial assistance to the States.

Senate Comm. on the Judiciary, 89th Cong., 2d Sess. Anti-trust Aspects of the Funeral Industry, Committee Print (1967), at 50.

While the Subcommittee thus did not directly authorize the FTC to proceed, there was clear sentiment by at least some members that, based on the evidence of pervasive abuses uncovered by the hearings, FTC action was needed. After eight years of state inactivity, we believe that the Commission was justified in re-examining the issues developed by the Subcommittee.

potential consumer problems. In order to gain this crucial overview, FTC staff spent the next six months conducting interviews with persons knowledgeable about industry practices,¹² collecting articles, books, industry-sponsored literature and statistical data relevant to the inquiry, examining past Commission and congressional activities relating to the funeral and related industries, and analyzing the bases of Commission jurisdiction over the industry.

The culmination of this major first step was the issuance of a 239 page planning report in June of 1973. As a result of its initial probe, the staff found that "consumer injury is substantial and remediable, that Commission jurisdiction extends to the suspect practices, that state regulation is seriously deficient, and, consequently, that there is a compelling need for Commission intervention." The report concluded with the recommendation that, in light of staff findings, the Commission authorize three immediate next steps: (1) use of compulsory process and non-public investigational hearings to examine possible violations of §5 by several large funeral chains; (2) use of a demonstration survey in the Washington, DC area in order to obtain basic funeral price and practice information; and (3) development of a proposed funeral rule. One month later, on July 24, 1973 the Commission approved a formal industry-wide

¹² The staff conducted dozens of interviews with funeral directors, memorial society leaders, local, state and federal government officials, economists, and legislators during this period.

non-public investigation and authorized the use of compulsory process.

Throughout the duration of the non-public investigation, numerous staff efforts were directed at obtaining information on which to begin attacking certain prevalent industry practices on a case-by-case basis. In addition to subpoenaing sales records, pricing data, operating manuals and kits, correspondence and other records and conducting non-public investigational hearings, the staff engaged in a number of in-person interviews (both within and without the industry), obtained voluntary information by letter and examined public company reports. As a direct result of this arm of the industry-wide investigation, an administrative action was filed by the Commission against Service Corporation International, the nation's largest funeral home chain.¹³

¹³ See Service Corp. Int'l, FTC Docket No. 9071 (August 1975).

The Commission's complaint was first issued in August 1975. It was superseded by a later complaint, issued January 20, 1976, which charged SCI with violations of Section 5 of the FTC Act for overcharging on cash advance items, making misleading claims concerning the airtightness, watertightness, or preservative capability of sealer caskets, requiring purchase of caskets for cremation, embalming without permission and making improper payments to hospital employees and public officials to acquire cases. The case was settled by a consent decree before completion of discovery or full adjudication. The consent order contained cease and desist relief for the first four practices and required SCI to make refunds to customers overcharged on cash advance items. (Service Corp. Int'l, 88 F.T.C. 530, 537-39, 540-41(1976).) It also contained a provision that would modify the final order to incorporate any provisions or practices covered by the order which were included in any trade regulation rule subsequently adopted by the Commission.

In its original "Planning Report," the staff had identified the unavailability of objective information on the prices and offerings of funeral homes as a significant problem for consumers. On October 4, 1973, the Commission authorized the use of orders pursuant to Section 6(b) of the FTC Act to carry out the staff-recommended pilot survey of funeral prices in the District. Following a press conference on October 18, the staff issued orders to 55 D.C. funeral homes to provide special reports to the FTC by early December. Six area memorial societies were also canvassed for corresponding price and practice information.¹⁴ This survey, the results of which were released in February, 1974, represented the first systematic effort to obtain specific data on funeral prices. The survey found that prices varied substantially among funeral homes for even the least expensive funeral; that a significant number of funeral directors did not give any price reductions for unwanted services or goods included in the package funeral; and that price information was inadequate. The FTC study inspired a spate of similar surveys throughout the country by state and local governments, consumer groups, and newspapers.¹⁵ These studies corroborated

¹⁴ See FTC Staff letter sent to 6 area memorial societies requesting information on prices and options available through societies in the greater Washington Federation, November 16, 1973.

¹⁵ See, for example, surveys conducted by the following:

- (1) Indiana Public Interest Research Groups (12/74);
- (2) New York PIRG (10/74)
- (3) Consumer Action of Kansas City, Missouri (10/74);

(Footnote Continued)

the findings of the D.C. Price Survey.

From early 1974 to the issuance of the first Staff Report in August, 1975, the staff also gathered more general evidence of industry-wide practices and conditions. Toward this end, the staff contacted numerous funeral directors, industry employees and former employees, casket manufacturers, memorial society members and consumers; trade journals, scholarly papers, magazines and newspaper articles supplied an additional information base. Additionally, national and local random telephone surveys and investigative visits to funeral homes provided the FTC staff with independent verification of the difficulties facing consumers in obtaining information from funeral homes and of the sales techniques used by some funeral directors to induce the purchase of merchandise and services.¹⁶

Further bolstering this evidence were the comments contained in over 1,000 letters received from consumers during this period, many of which included specific complaints about industry practices.

15 (Footnote Continued)

- (4) San Bernadino Sun-Telegraph, San Bernadino, Ca.;
- (5) Northern Virginia News, Vienna, Va.
- (6) The Cincinnati Enquirer, Cincinnati, Ohio;
- (7) Division of Consumer Affairs, State of Delaware (10/74);
- (8) Office of Attorney General, State of Arkansas (10/74);

- 16 Staff members observed these conditions first-hand at funeral homes visited in Washington, D.C., New York City and Miami. In addition to the D.C. price survey, a national random telephone survey was conducted in July, 1974, as well as local surveys in Miami (5/19/75) and Minnesota (4/74).

Throughout the formal investigation, there were contacts with representatives of the funeral industry. In 1973, staff members met with leaders of National Selected Morticians and with officers of several of the major chains of funeral homes. In February of 1974, NSM and NFDA wrote to the Commission to request that industry sponsored guidelines be considered.¹⁷ On April 18, NFDA submitted draft guidelines to the Commission, thus initiating a dialogue between FTC staff and industry representatives concerning the various issues raised by the guidelines. During this period, a series of letters was also exchanged with the National Funeral Directors and Morticians Associations, Inc. (NFDMA), thus providing the Commission with the opinions of black funeral directors on these issues. From September through December of 1974, FTC staff met with NFDA and NSM spokespersons at the Commission's New York Regional Office to discuss areas of disagreement, including industry opposition to mandatory itemization of prices.¹⁸

¹⁷ See letter from Tom Clark, counsel, NFDA, February 18, 1974 and letter from Dave Murchison, Counsel, NSM, February 19, 1974. Both letters requested that the FTC consider industry guidelines rather than some sort of mandatory approach.

¹⁸ On October 30, 1974, representatives of the New York and New Jersey funeral directors associations, NFDA and NSM met with FTC staff in the New York Regional Office. At this meeting, FTC staff spelled out ten major points and then requested that the trade associations provide an industry position on each point. The group reconvened on December 13, to hear Tom Clark, counsel to NFDA present the funeral industry's views -- including industry's opposition to itemization.

By early 1975 it became increasingly clear to FTC staff that a voluntary approach would be unsuccessful in correcting some of the most basic information deficiencies and specific consumer abuses uncovered during the course of the investigation. Evidence collected revealed that a number of significant practices were the rule rather than the exception. Voluntary reform appeared unlikely, however, because industry representatives failed to agree with the FTC staff that certain of these significant and pervasive practices were unfair or deceptive.

After sifting through and weighing the information collected over a 2 1/2 year period, FTC staff in August, 1975, summarized this evidence in a 106-page staff report, containing a proposed trade regulation rule.

As can be seen from this summary description of the investigation prior to the commencement of the rulemaking proceeding, the FTC developed evidence from a wide variety of sources in addition to consumer complaints. Based on this evidence, we believe that the Commission was justified in deciding to commence a rulemaking proceeding. As we tried to emphasize in our remarks, that decision did not mean that the Commission had decided that a rule was necessary, but only that a rulemaking proceeding was needed to find out whether, in fact, a rule was appropriate.

4. Interstate Jurisdiction

Congressman Lent also raised a question concerning the interstate aspects of the funeral industry. Specifically, Congressman Lent was interested in the number of bodies that were shipped across state lines. According to a survey sponsored

by the National Funeral Directors Association, a little under 10% of all deaths involved interstate shipment. In 1974, an estimated 165,000 to 185,000 bodies were shipped across state lines.

In light of Congressman Lent's concern about the Commission's jurisdiction over funeral industry practices, we have attached as Appendix II the pertinent section of the 1978 Staff Report which summarizes the record evidence on this point.

5. Analysis of Consumer Complaints

Chairman Eckhardt expressed interest in an analysis of the consumer complaints received by the Commission during the rulemaking proceedings. While these complaints have not been indexed by subject matter, the Staff Report cites to individual complaints as examples received during the rulemaking proceedings. Recently, we reviewed the written comments received prior to the hearings. Of these, some 1289 letters were supportive of the rule. In fact, 625 contained specific complaints about funeral practices. In addition to these complaints, hundreds more were received during the testimony and public comment period following the publication of the Staff Report. We estimate that the record contains at least 1,000 specific complaints about unfair or deceptive funeral practices.

A rough idea of the type of complaints received can be garnered from the citations in the Staff Report. For example, the Report cites 47 separate complaints about embalming without permission; 124 complaints about requiring a casket for cremation; 13 complaints about overcharges on cash advances; 72 com-

plaints about misrepresentation; and 97 individual complaints about the unavailability of price information. These citations were merely illustrative and by no means constituted all of the consumer complaints of record.

As we tried to indicate in our testimony, the record by no means depends on consumer complaints as proof of the practices addressed in the rule. Numerous surveys and studies conducted by a wide variety of groups, including the industry, as well as the testimony of funeral directors and others, provide the most direct evidence of the extent of consumer problems.

6. Procedural Reforms

In response to some concerns of Congressmen Lent, we offered to provide for the record a list of the recent reforms the Commission has adopted to provide additional guarantees of fairness in the rulemaking proceeding. We have attached as Appendix III a list of reforms which Chairman Fertschuck submitted to the Senate Commerce Subcommittee on Consumer Protection last October.

Books

APPENDIX I

BIBLIOGRAPHY

Bernard, Uy, The Law of Death and Disposal of the Dead, 1966.

Bowman, Leroy, The American Funeral, 1959.

Irifon, Paul, The Funeral, Vestige or Value, 1966.

Fulton, Robert (Ed.), Death and Identity, Wiley, 1965.

Harvey, Ruth Mulvey, The High Cost of Dying, 1963.

Kissel, Gerald Joseph, An Analysis of the Market Performance of the Funeral Home Industry in Philadelphia, 1970.

Kubler-Ross, Elizabeth, On Death and Dying, Macmillan Company, 1969.

Lifton, Robert J., Boundaries: Psychological Man in Revolution, Random House, 1970.

Lifton, Robert J., Death in Life: Survivors of Hiroshima, Random House, 1969.

Margolius, Sidney, Funeral Costs and Death Benefits, 1967.

Mitford, Jessica, The American Way of Death, 1963.

United States Congress, Senate Special Committee on Aging, Subcommittee on Frauds and Misrepresentations Affecting the Elderly, May 19, 1964.

United States Congress, Senate Subcommittee on the Judiciary, Subcommittee on Antitrust and Monopoly, Senate Resolution 262, July 7, 8 and 9, 1964.

MAGAZINES1972

- "Deep Six; Trend to Burials At Sea", 11 Newsweek 79:43 Jan 10, 1972.
 "What You Should Know About Funeral and Burial Costs," 11 Good H.
 174:180 Feb 1972.

1971

- "Bury the Dead; Colma, San Francisco," 11 Newsweek 78:105-6 Oct 11, 1971.
 "Cemeteries - Let Sleeping Bones Lie; Indians' Graves," Chr. Cent.
 88:1157 Oct 6, 1971.
 "Planning For Death Cloaked in Euphemisms," Wall Street Journal,
 Dec. 29, 1971 - 1;5.

1970

- Drake, R., "Don't They Look Natural?" Chr. Cent. 87:1416+ Nov 25, 1970.
 "Funeral Home Industry Stock," Wall Street Journal, Mar. 16, 1970-29;3.
 "Gravediggers Return To Work," Wall Street Journal, Mar 11, 1970-10;2.
 "How America Lives With Death," Newsweek, Apr 6, 1970.
 "Issue On Death," Psychology Today, August 1970.
 Lifton, Robert J., "The Politics of Immortality," Psychology Today,
 Nov 1970.
 "Merchants of Death," Forbes, 106:59 Nov 5, 1970.
 "Tax Exempt Cemetery Company Exemption Affected By Running A Crematorium,
 Too," Wall Street Journal, Jan 7, 1970 - 1;3.
 "Telling It Like It Was - Obituaries," Wall Street Journal, Jan 5, 1970-
 1;4.
 "The Psychology of Death," Newsweek, Sep 14, 1970.
 "Tombstone Industry Facing Future That's Well, Grave," Wall Street Journal
 Dec. 1, 1970 - 1;4.

Magazines (Cont.)1969

"Changing Way of Death," Time 93:60 Apr 11, 1969.

"Plot Swapping Among Cemeteries," Wall Street Journal, Mar 13, 1969-1;5.

1968

"Automotive Mourning," Time 91:61-2 Apr 3, 1968.

"Drive In Funeral Parlors," Life 64:22 May 10, 1968.

"Grave Squeezes," Newsweek 72:94+ Sep 16, 1968.

"Renting Cops As Escorts for Private Funeral Processions Ruled Illegal by Honolulu City Attorneys," Wall Street Journal, July 23, 1968-1;5.

"Tombstone Territory - Philadelphia Tries to Transfer Graves," Wall Street Journal, Aug 7, 1968-1;4.

"Undertakers Group Agreed to Judgment Aimed at Encouraging Price Competition," Wall Street Journal, July 18, 1968- 6;1.

"Viewing the Remains; Drive In," Nation 207:261-2 Sep 23, 1968.

1966

Maisel, Albert Q., "Facts You Should Know About Funerals," Readers Digest, September 1966.

"Mutual Fund for Investment of Cemetery Maintenance Endowments, Said To Be First in Country, Formed in Illinois," Wall Street Journal, Sep 27, 1966-6;3.

1965

"Furor Over Funerals: Attack on High Costs," Wall Street Journal, Apr 21, 1965-1;4.

"Eckel's College of Mortuary Science to Close Doors," Wall Street Journal, Sep 7, 1965-1;5.

"Morticians Group Proposing Code of Good Practice Requiring Full Disclosure of Funeral Prices," Wall Street Journal, Aug 13, 1965-2;3.

1964

"Checking Over Burial Bills," Senate Hearings on Burial Business, Business Week, p. 36 July 11, 1964.

"IRS Ruled Non-Profit Cemetery Formed to Own Land For Burial Service Will Lose Tax-Exempt Status If It Also Operates Mortuary," Wall Street Journal, May 6, 1964-1;5.

1963

"Burial Business Hears Voices," Business Week, p. 80+ Nov 9, 1963.

"Business of Dying," Time 82:68+ Sep 20, 1963.

"Undertakers Racket," Mitford Allan, 211:56-62 July 1963.

APPENDIX II

D. The Commission's Jurisdiction

The issue of the Commission's jurisdiction over the funeral industry was also the subject of substantial comment during the proceeding. The initial staff memorandum outlined several bases for satisfying the "in or affecting commerce" standard,⁶⁹ concluding that the question was beyond serious doubt, particularly in light of the clear Congressional intent in the Magnuson-Moss Amendments to expand the Commission's jurisdictional reach.⁷¹ Nevertheless, the issue was a basis for comment from a number of industry members and trade associations,⁷² a major NPDA-sponsored survey,⁷³ the NPDA/NSM

⁶⁹ See generally Part One, Section II, *supra*.

⁷⁰ Federal Trade Commission Act, 15 U.S.C. Section 45 (1976).

⁷¹ Bureau of Consumer Protection, Federal Trade Commission, Funeral Industry Practices: Proposed Trade Regulation Rule and Staff Memorandum, 6 (1975), VI-D-41. See H. R. Rep. No. 93-1107, 93d Cong., 1st Sess. 29-31 (1974).

⁷² Comments of NPDA, II-A-659 at 58; D. Murchison, Counsel, NSM, Tx 12,392; Comments of the International Order of the Golden Rule, II-A-666 at 304; T. Clark, NPDA, General Counsel, Tx 2537; L. W. Rill, Pres., Washington State FPA, II-A-678 at 4; Comments of Service Corporation International, II-A-675 at 4.

⁷³ Membership Survey for NPDA, conducted by Central Surveys, Inc., Danforth Ex. 3(NY) at 3.

petition to convert the rulemaking into a guide proceeding,⁷⁴ and industry efforts to obtain Congressional intervention in the course of the proceeding.⁷⁵ On review and analysis, it is clear that this effort falls far short of raising any serious doubt about the Commission's authority to promulgate the recommended rule.

There are several bases through which the practices addressed by the rule may be found to be in or affecting interstate commerce. Perhaps the most universal manner in which the funeral business affects interstate commerce is through the purchasing and receiving of merchandise and supplies from out-of-state.⁷⁶ In analyzing this relationship with commerce, it is necessary to consider the funeral director as a seller of merchandise and services apart from the intangible aspects of funeral service frequently mentioned by the industry.⁷⁷ In this role, the mortician sells a variety of merchandise including caskets, vaults, embalming fluid and other incidental items. The record evidence indicates that very often this merchandise, particularly caskets which are the principal components for most funeral bills, originates

⁷⁴ Petition to the Commissioners of the FTC by NSM to Reconsider and Convert Trade Regulation Rule Proceeding to an Industry Guides Proceeding 7-12 (1975), I-A-22 (Petition joined by NFDA).

⁷⁵ See T. Risenhoover, U.S. Congressman (Oklahoma), II-C-733; C. Hubbard, U.S. Congressman (Kentucky), Tx 3702; J. Fary, U.S. Congressman (Illinois), Tx 2583; House Small Business Subcommittee Hearings (Part III), supra note 2 at 66; House Small Business Subcommittee Hearings (Part IV), supra note 2, at 75. See also H.R. Rep. No. 94-1761, supra note 8.

⁷⁶ It is well established that the movement of goods through interstate commerce is sufficient to establish federal jurisdiction. See U.S. v. Employing Plasters, 347 U.S. 186 (1954); Doctors, Inc. v. Blue Cross, 490 F.2d 48 (3d Cir. 1973); Las Vegas Merchant Plumbers v. U.S., 210 F.2d 732 (9th Cir. 1954). See also memorandum: Arthur Angel to J. Thomas Rosch, Jan. 17, 1975, I-B-5.

⁷⁷ For the purposes of legal analysis, the fact that a product sold is a mixture of interstate goods and other services is not significant for interstate commerce questions. See Doctors, Inc. v. Blue Cross, 490 F.2d 48 (3d Cir. 1973).

with an out-of-state manufacturer or wholesaler.⁷⁸ Funeral directors from various parts of the country testified that in their operation they purchase caskets made out-of-state, usually from national manufacturers.⁷⁹ Additional evidence indicated that vaults and other funeral merchandise are ordered from out-of-state suppliers, shipped across state lines, and then paid for interstate.⁸⁰

The various provisions of the recommended rule address practices or impose requirements which are directly related to the choice of a particular funeral home, method of disposition or the selection and purchase of particular merchandise and services. As such, they are uniformly concerned with the consumer's expenditure of money for goods and services. To the extent that this merchandise moves in or affects interstate commerce, the Commission will have jurisdiction to enforce the rule requirements.

78 Industry estimates reveal that the total wholesale value of funeral merchandise shipped by casket companies in 1975 was \$425,713,000. Additionally, the concrete burial vault business is estimated to have a total annual value of \$292 million, with an additional \$18-23 million spent for metal vaults. The 1975 estimate of the embalming chemical business (other than that of casket manufactures) is \$15 million. See The American Funeral Director, American Blue Book of Funeral Directors 1976-77, at 720, 722 (23rd ed.). Even in the absence of a breakout of the interstate component of these figures, it is clear that, on the basis of supply purchases alone, the funeral industry has a substantial impact on the flow of interstate commerce.

79 H. DeVol, member, D.C. Licensing Board for Funeral Directors and Embalmers, Tx 14,120; B. Hirsch, Pennsylvania funeral director, Tx 12,514; T. Sampson, Pres., Massachusetts FDA, Tx 959; A. Juska, Vice Pres., New Jersey State FDA, Tx 2492; C. S. Hausman, Executive Director, New Jersey State FDA, Tx 527; F. Galante, past Pres., NFDA, Tx 1725; W. Riddle, Pres., Montana FDA, Tx 5662; M. Heard, Pennsylvania funeral director, Tx 13,153; J. Kerr, Kentucky funeral director, Tx 3057-58; D. Clements, Executive Secretary, South Dakota FDA, Tx 4411; House Small Business Subcommittee Hearings (Part IV), supra note 2 at 2. One industry member estimated interstate shipment of two million dollars worth of caskets into Utah per year. A. Anderson, Pres., Utah FDA, Tx 6150.

80 K. White, General Counsel, Con-o-Lite Corporation, Tx 13,207, (vault company sells vaults to funeral directors in 17 states); R. Myers, Chairman, Utah State Funeral Directors and Examining Board, Tx 8269; M. Neely, Florida FDA, Tx 10,050.

A second interstate aspect of the funeral industry is the shipment of human remains across state lines for funeral purposes. With the increased mobility of modern society, the number of instances in which remains are shipped to another state for final disposition has increased substantially.⁸¹ Several funeral directors confirmed the fact that their business involves this interstate component, and one estimated that approximately one-third of his funerals were "shipping cases."⁸² Another nationwide estimate reveals that in 1973 there were approximately 70,000 bodies transported by scheduled commercial airlines, and innumerable others shipped interstate by private air carrier, railroad, or by funeral coach.⁸³ Additionally, such interstate circumstances may also be present when the funeral home operates in a market area which crosses state lines.⁸⁴

Yet another basis cited for asserting Commission jurisdiction over funeral industry practices is the substantial amount of money which the federal government pays directly to funeral directors each year.⁸⁵ Through programs of the Social Security and Veteran's Administrations, federal death benefits are available to a substantial portion of funeral

⁸¹ See Antitrust Aspects of the Funeral Industry: Views of the Subcomm. on Antitrust and Monopoly to the Senate Comm. on the Judiciary, pursuant to S. Res. 191, 89th Cong., 2d Sess. 5-6 (1967), VI-D-30 [hereinafter cited as 1967 Senate Comm. Report]. See also Am. Funeral Director, March 1977, at 30.

⁸² House Small Business Subcommittee Hearings (Part IV), supra note 2, at 21; T. Sampson, Pres., Massachusetts FDA, Tx 959; C. S. Hausmann, Executive Director, New Jersey State FDA, Tx 526.

⁸³ See The American Funeral Director, American Blue Book of Funeral Directors 1972-73, at 666-74 (21st ed.). See also Planning Memorandum from Division of Evaluation, Bureau of Consumer Protection to the Commission, VI-D-2 at 13, n. 10.

⁸⁴ 1967 Senate Comm. Report, supra note 81, at 6.

⁸⁵ Cf. Goldfarb v. Virginia State Bar, 421 U.S. 773, 783 (1975) (federal funds used to finance real estate transactions made state bar's fee schedule part of interstate commerce).

purchasers. Testimony indicated that in fiscal 1976-77 the Social Security Administration would pay \$345 million in death benefits, and the Veteran's Administration an additional \$143 million.

Other interstate aspects of funeral transactions were cited in the proceeding. Obviously, the funeral homes which are owned and operated by multi-state corporations are within the Commission's jurisdiction. The practices of funeral home chains such as Service Corporation International which operates some 160 funeral homes in sixteen states and Canada, and International Funeral Service with 105 establishments in fifteen states clearly are "in or substantially affect" interstate commerce.⁸⁷

Additionally, the movement of customers from one state to another may sufficiently affect commerce to confer jurisdiction.⁸⁸ Advertising in media with interstate distribution or the frequent use of interstate communications such as the U.S. mail and the telephones are other examples of jurisdictional bases for Commission regulation of certain funeral industry practices.⁸⁹ The existence of national trade associations which are responsible for much of the information disseminated to the individual funeral directors may add an additional interstate element to some practices. Certainly to the extent the rule applies to such associations, jurisdiction is beyond question.⁹⁰

Finally, the industry's effort to empirically demonstrate that funeral directors are not within the Commission's jurisdiction deserves specific comment. NFDA commissioned a survey of its membership to obtain data on the issue and

⁸⁶ G. McMichael, General Counsel, Committee on Veteran's Affairs, U.S. Senate, Tx 13,413. These figures do not reflect the full federal expenditures; other death benefit programs are included in the Federal Employees Compensation Act and benefits are available to personnel in the Public Health Service, the Peace Corps, Armed Forces, etc.

⁸⁷ See Moody's Indust. Manual 1643, 2828 (1977); Service Corp. International, 88 F.T.C. 530 (1976), Dkt. 9071. Other funeral home chains include Uniservice Corporation (27 homes in three states), American Funeral Homes, Inc. (twelve homes in four states), and Skylawn, Inc. (5 homes in 2 states).

⁸⁸ See K. O'Reilly, attorney, Consumer Federation of America, Chi. Stmt. at 14-16.

⁸⁹ Id. at 12-13.

⁹⁰ See Section 453.6 of the recommended rule.

presented the results at the hearings.⁹¹ As defined by NFDA, the question to be answered was "Does the average funeral firm, by its activities as such, significantly affect commerce?"⁹² The survey instrument drafted by NFDA, however, sought information on only one relevant issue - the ratio of the number of instances in which a body was transported across a state line for "funeralization" to the total number of deaths.⁹³ Based on the data received from NFDA members, the survey firm projected that in 1974, out of a total of 1,934,388 deaths, between 165,000 and 185,000 bodies were shipped across state lines.⁹⁴

Examination of the witness and the report clearly indicates that the survey falls far short of a comprehensive effort to determine empirically whether funeral directors are in or affecting commerce. No legal research was conducted by the firm to ascertain what factual data might be relevant to the question of commerce clause jurisdiction.⁹⁵ From the other discussions of the jurisdiction issue in the record⁹⁶ and the preliminary legal analysis available,⁹⁷ it is clear that the NFDA survey ignores other areas of inquiry which are pertinent to the question as presented. Nothing on the survey instrument seeks data regarding the volume of caskets and other supplies purchased from out-of-state suppliers, for example.⁹⁸ Nor was an effort made to ascertain the frequency of use of interstate media by funeral homes or the percentage of funerals involving federal funds. With such shortcomings, this expensive effort to present significant evidence in fact adds very little to the overall determination of the funeral

⁹¹ Danforth Ex. 3(NY).

⁹² F. Danforth, NFDA consultant, Tx 1785.

⁹³ Danforth Ex. 3 (NY). Other questions not relevant to the jurisdiction issue were also included.

⁹⁴ Danforth Ex. 3 (NY) at 1. (Between 82,000 and 102,000 bodies were shipped from one funeral director to another and an additional 83,000 were transported interstate by one funeral director.)

⁹⁵ F. Danforth, NFDA consultant, Tx 1822-23.

⁹⁶ K. O'Reilly, attorney, Consumer Federation of America, Chi. Stmt. at 8-23.

⁹⁷ Bureau of Consumer Protection, Federal Trade Commission, Funeral Industry Practices: Proposed Trade Regulation Rule and Staff Memorandum, (1975), VI-D-4; Memorandum: Arthur Angel to J. Thomas Rosch, Jan. 17, 1975, I-B-5.

⁹⁸ F. Danforth, NFDA consultant, Tx 1824.

industry's impact on interstate commerce.⁹⁹ Consequently, the NFDA survey does not raise any serious doubt about the Commission's jurisdiction over the industry.

In sum, the Commission has several legitimate bases on which to assert jurisdiction over the funeral industry. Moreover, the industry's argument on this issue is somewhat premature since a trade regulation rule could not be defeated simply by a showing that certain practices of some industry members which would otherwise be covered are not "in or affecting commerce." The recommended rule specifically states that it applies only to those funeral establishments whose business practices satisfy the jurisdictional test. On the basis of this limitation, the rule on its face is a valid exercise of the authority granted to the Commission by Congress, provided that other substantive and procedural standards are met.

Appendix III

FTC Rulemaking Reforms

1. Improvements in Investigation and Review Stages

- Operating Manual now directs staff to "consult with broad cross section of industry members and related interest groups who may have different positions and interests with respect to a completed rule"
- Alternatives to rulemaking are to be specifically considered during investigations and discussed in staff report
- Upcoming rulemaking proposals announced in semi-annual regulatory agendas published in the Federal Register
- Detailed analysis of major rulemakings will be published in forthcoming government-wide Regulatory Calendar
- Economists are now assigned to assist staff at beginning of investigation and a separate Division has been established in Bureau of Economics to work on Bureau of Consumer Protection matters
- Staff report recommending rulemaking more detailed including:
 - (1) Discussion of alternatives to rulemaking ("analysis should lead to a thorough exposition of why rulemaking, in conjunction with selected administrative complaints, or other recommended enforcement action is the most appropriate course of action for achieving the desired results.")
 - (2) "Discussion of the possible effects of the TRR on state and local laws, and the ways, if any, of resolving or minimizing potential conflicts"
 - (3) Analysis of compliance considerations posed by the TRR
- Extensive staff review of report by Evaluation Committee, Bureau Director, and Bureau of Economics

Major Improvements in Management of Rulemaking Record

- Presiding Officer given responsibility for record, thus reducing delay and controlling processing of documents
- Rulemaking record reduced by having separate file for non-relevant but related material
- public access to records improved by:

- (1) Establishment of uniform categories of documents
- (2) Keying of docket sheets to categories
- (3) Microfilming record
- (4) Providing publicly available indices to record for post-record comments
- (5) Improving record room for convenience of public

3. Changes in procedures

- Timetables established for proceedings
- Oral presentations to Commissioners
- Reversal of order of staff and presiding officer's reports to reduce delay
- Experiments with procedures for oral hearings:
 - (1) Use of two-stage hearing format (Kid-Vid), as recommended by House Oversight Committees and the Administrative Conference
 - (2) No designation of issues, control cross-examination by time limits (R-Value)
- Transfer of presiding officers and public participation program to General Counsel's Office
- All background information obtained by staff (other than FOIA-exempt) is made publicly available at start of the proceeding
- Ex parte rules changed to permit interested persons to meet with individual Commissioners and to assure Congress' right to oversee our rulemakings by communicating with Commissioners.

FEDERAL TRADE COMMISSION

WASHINGTON, D. C. 20580

April 30, 1980

BUREAU OF
CONSUMER PROTECTION

OVERSIGHT

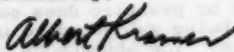
Chairman Bob Eckhardt
 Subcommittee on Oversight and Investigations
 of the Committee on Interstate and
 Foreign Commerce
 2323 Rayburn House Office Building
 Washington, D.C. 20515

Dear Mr. Chairman:

By letter dated March 31, 1980, I provided certain additional information to the Subcommittee regarding the Federal Trade Commission's funeral rule proceeding. I also indicated that we would respond by a separate letter to Congressman Lent's questions about the Commission's "policy planning" approach to rulemaking, and requested that this separate response be included in the record. My recent letter to Congressman Lent is enclosed.

I appreciate the opportunity to provide this information to the Subcommittee.

Sincerely,



Albert H. Kramer
 Director

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

BUREAU OF
CONSUMER PROTECTION

April 30, 1980

Honorable Norman F. Lent
Cannon House Office Building
Room 341
Washington, D.C. 20515

Dear Congressman Lent:

This is in reference to my recent testimony before the Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce, concerning the Federal Trade Commission's funeral rule proceeding.

During my testimony, you asked several questions about the Commission's "policy planning" approach to rulemaking. In particular, you asked me for examples of rulemaking proceedings in which we have found evidence of the need for rulemaking despite the presence of few consumer complaints. Although I was unable to respond fully to your concerns at the hearings, I am taking this opportunity to provide you with some additional information on the subject.

As you pointed out at the hearings, the presence of substantial consumer complaints should alert us to problem areas that may warrant Commission attention. On the other hand, the absence of consumer complaints about a particular industry or practice does not necessarily mean that consumers are not being subjected to unfair or deceptive acts or practices. The absence of complaints may be due to the fact that consumers do not know they are being injured. In many cases, an analysis of the way in which the market functions and of consumer transactions will reveal the potential for consumer injury. Further investigation is then necessary to determine whether such injury is actually occurring, the extent of the injury, and whether the practices in question are amenable to remedial action by the Commission. This is the thrust of the policy planning approach.

A number of the Commission's rulemaking proceedings have been initiated following such an analysis. For example, the rulemaking on home insulation products, which was initiated in 1977, grew out of a task force analysis of the market for energy conservation products. The task force found that this market would expand dramatically in the years to come, that consumers did not know what factors to consider when making purchasing decisions about insulation

materials, that manufacturers were not providing the information consumers needed to make intelligent purchasing decisions, and that this marketplace situation appeared to be causing economic injury to consumers. In light of this analysis and investigation, and despite the absence of substantial consumer complaints, the Commission conducted a rulemaking proceeding, and later promulgated a rule that would require the disclosure of adequate information to consumers.

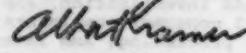
The home insulation rule serves as a useful example of the policy planning approach because it illustrates the risks associated with relying solely on consumer complaints as an index of consumer injury. The problem with the home insulation market was not only that consumers were being given inadequate product information, but that consumers did not realize that they were getting inadequate information. Further, it was not possible for consumers to determine, even after making their purchasing decisions, whether those decisions had been correct. Thus, in this case the absence of consumer complaints simply indicated that consumers did not know enough to complain.

Another instructive example of the policy planning approach at work is the Commission's eyeglass rulemaking. There, the Commission's record demonstrated that the public and private restraints on the advertising of ophthalmic goods and services, and the failure to provide a copy of the consumer's eyeglass prescription, were causing substantial economic injury to consumers. Despite the clear economic injury, there were very few consumer complaints regarding these practices. The explanation for this is simple: consumers had no idea that they were being injured by these practices.

I have focused at some length on the home insulation and eyeglass rules as examples of our policy planning approach to rulemaking. However, this approach has been followed in other rulemaking proceedings as well. These include the holder-in-due-course rule, the creditors remedies rule, the food advertising rule, and others. On the other hand, the Commission has also initiated investigations and rulemakings in areas which are the subject of numerous consumer complaints. Examples of the latter include the vocational schools rule, the hearing aid rule, and the used car rule. In my view, these two approaches to rulemaking investigation are complementary, rather than mutually exclusive.

I hope that these comments have been helpful. If I can be of further assistance, please let me know.

Sincerely,



Albert H. Kramer
Director

cc: Chairman Bob Eckhardt
Subcommittee on Oversight and Investigations
of the Committee on Interstate and
Foreign Commerce
2323 Rayburn House Office Building
Washington, D.C. 20515

Mr. GORE. I would like to call now Mr. Peter Hughes, legislative counsel for the National Retired Teachers Association and American Association of Retired Persons.

Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HUGHES. I do.

Mr. GORE. Please identify your associate for the reporter.

**TESTIMONY OF PETER W. HUGHES, LEGISLATIVE COUNSEL,
NATIONAL RETIRED TEACHERS ASSOCIATION AND AMERICAN
ASSOCIATION OF RETIRED PERSONS, ACCOMPANIED BY
BETSY MESSER, LEGISLATIVE REPRESENTATIVE**

Mr. HUGHES. Thank you, Mr. Gore.

My name is Peter Hughes. I am legislative counsel for the National Retired Teachers Association and the American Association of Retired Persons.

Mr. GORE. You are accompanied by whom?

Mr. HUGHES. This is Mrs. Betsy Messer, a legislative representative on my staff.

Mr. GORE. You do not intend to offer testimony?

Mr. HUGHES. She is here as an assistant. She has all the answers.

Mr. GORE. Without objection, the text of your prepared statement will be inserted in the record. [See p. 211.] Please feel free to proceed with any or all of it as you see fit.

Mr. HUGHES. With your permission and Mr. Lent's permission, I will summarize in the interest of your time, as well as that of the other witnesses.

Mr. GORE. That is fine.

Mr. HUGHES. I am sorry to see the chairman had to leave. I did want to mention that we greatly appreciate Mr. Eckhardt's continuing interest and support in regulation of the funeral industry

by the FTC and the continued interest of this subcommittee and its members.

Mr. GORE. Let the record reflect that Chairman Eckhardt was called to attend a meeting of the Energy Conference Committee. That is the reason for his departure.

Mr. HUGHES. At the outset I would like to emphasize our strong support for the efforts by the Federal Trade Commission to protect consumers, particularly the older consumer, from anticompetitive and unfair or deceptive practices which we believe inflate the costs which persons must pay for goods and services. The funeral rule, we believe, reflects such an effort on the part of the FTC.

It was at the urging of our own members that in 1975 NRTA/AARP became actively involved in trying to do something about the high cost of funerals. It is their interest and concern that has kept us involved ever since. Over the years association members, volunteer leaders, and staff have committed untold effort and time toward achieving what appeared to finally be the end of a long rulemaking process.

The funeral rule, however, as we all know, is now in serious jeopardy due to the favorable vote on the Russo amendment to H.R. 2313 on November 14, 1979. If there is one message that we as an association can leave with this subcommittee today, it is that the FTC funeral rule is not a case of overregulation but rather a case of much needed straightforward disclosure.

However, toward the end of the rulemaking process it became apparent that the funeral rule was fast becoming a target of an antiregulatory mood which is now prevalent both in the country and particularly here in Washington. Any troubles that the proposed rule previously had paled beside the onslaught which culminated in the House's acceptance of the Russo amendment to terminate the FTC's rulemaking for the funeral industry.

Our associations find it hard to believe that 223 Members of Congress felt that the funeral rule was a clear example of the Federal Government overregulating industry. The congressional antiregulatory mood has unfortunately become so indiscriminating that if the label "overregulation" or "consumer protection" attaches to a bill it is almost automatically prejudiced without regard to its merits.

We do not think that many of those who voted for Representative Russo's amendment had clearly separated out the merits of the funeral rule and its positive effects on their constituents versus the funeral industry's use of the popular criticism that regulation drives up the costs of doing business and is inflationary. We think that this antiregulatory fervor contributed significantly to the success of this amendment.

I would like to point out that our associations strongly support the view that Government regulation in many cases imposes high and unnecessary costs, lowers productivity, is anticompetitive, and helps to drive up prices. This type of regulation is inflationary, and older persons, I believe, particularly those who exist on low incomes or set incomes tend to be hurt the most by inflated costs due to unnecessary or excessive regulation.

We have supported the elimination of this kind of regulation and have done so, for example, with regard to the deregulation of the

airlines by CAB. Also, we have been in the forefront of the fight to do away with regulation Q in the banking and savings and loan industries. We testified on that this morning, as a matter of fact.

It is, however, our firm belief that the minimal regulation of the funeral industry as proposed by the FTC falls into the category of necessary regulation to promote competition, consumer protection, and fair practice. Our belief is based on two characteristics of the funeral purchase.

First, for retired persons the likelihood is that the expense of a funeral will constitute their largest single purchase in their remaining years. This expense is very different from any other major purchase that they have made in their lifetime, such as a home, car or furniture, because it is a purchase that is made quickly during a time of extreme emotion and vulnerability. The infrequency and the nature of this purchase make it dissimilar from any other and makes the consumer more susceptible to abuse and deception.

Second, the funeral industry is basically a nonprice competitive industry. It is anticompetitive practices that we believe drive up prices and maintain them at artificial levels, which must be borne by the consumer. Competition is further inhibited by inadequate State regulations which fail to mandate useful and necessary price information.

It was mentioned that the attorney general of North Carolina felt that this was something that should be regulated by the States. I am told that North Carolina has little or no regulation to protect consumers in the area of funerals.

Mr. GORE. As a matter of fact, inasmuch as you mentioned that, I was just noticing in the appendix to the testimony by the previous witnesses that neither North Carolina nor North Dakota have any laws to speak of. North Carolina has none of the 13 provisions in the FTC proposed rule. North Dakota does have some prohibitions against misrepresentation of legal and cemetery requirements. It has no provision with regard to the other 12 items in the proposed rule.

Mr. HUGHES. Mr. Gore, we are not singling out the funeral industry. We have noticed in our fights for hospital cost containment and other consumer issues that the States that scream States rights the loudest and that these are matters which should be regulated by the States—medigap insurance is another example—are the States that have little or no regulation to protect the consumer. I find that rather odd.

Mr. GORE. Incidentally, I am sponsoring an amendment on medigap that would allow a seal of approval.

Mr. HUGHES. Yes, we are supportive of that.

Mr. GORE. Thank you very much. Please proceed.

Mr. HUGHES. The purpose of the funeral rule is to increase the availability of consumer information—options, prices, and legal requirements. We believe this increased information will contribute to greater competition in the funeral industry and lower prices for consumers. The more knowledgeable the consumer is about what is and is not required by State law and what the costs are of each component of a funeral, the more likely he will receive and pay for only those services he desires.

The keyword is "choice." In a noncompetitive market the consumer has limited choices and his situation is aggravated by a lack of information. If he is informed about prices and alternatives and spends a great sum of money on a funeral, then he has done so out of choice and not out of ignorance or manipulation.

For the funeral industry to say that Federal regulation of their industry is overregulation—for example, excessive, unnecessary, and inflationary—is an erroneous and fallacious argument for an industry where price competition does not exist and some existing State regulation or nonregulation is more beneficial to industry members than to consumers.

A straightforward disclosure-oriented rule is not excessive. Most other businesses will quote prices when requested and allow the consumer to pick and choose among their goods and services. While the funeral industry may argue that it makes prices information available, it fails to do so in a meaningful and useful method in most instances. Written, itemized price information is rarely available at the outset of the funeral transaction. In addition, the rule does not preempt State laws which are similar or stronger than what the FTC has been proposing.

If the industry was more competitive there would probably be no need for regulation because services would be produced at lower cost and prices would be lower. If existing State regulation was more oriented toward the user of the goods and services instead of the seller, then there would probably be no need for regulation.

It is the lack of price competition that is inflationary and not the FTC rule. The rule would have the effect of lowering the price of funerals by increasing price competition among funeral homes. Despite industry claims, this rule has been specifically designed to keep compliance costs at a minimum. Compliance costs in this case must be seen as trivial, we believe, when compared to the potential savings for consumers.

Our associations' record of support for the FTC funeral rule is longstanding. Our 12.6 million members will feel it is a sad day if Congress decides to terminate the rule based on an argument that is grossly misplaced. The funeral rule is not overregulation. We would like to reiterate our appeal that Congress examine the rule in the context of its merits, its record, and its potential savings for those who can ill afford thousands of dollars worth of needless and unwanted funeral services.

I would like to close my testimony by quoting one of our members who was forced to purchase a much more expensive funeral for her husband than both of them had wanted or needed. I do not quote this as another horror story but as a plea to put an end to, as she says, "victim ripoffs."

She has now gone to another funeral home and made arrangements for her own funeral at a cost approximately half that of her husband's for identical services.

Mr. Chairman, I would like to quote briefly from her letter, which I received several weeks ago. This is not a letter that was received in 1962, 1964, 1972, or 1975. It was received in 1979. I quote:

Usually I am opposed to Government regulations on private businesses. But having just recently been pressured by the funeral industry into the purchase of a casket for cremation of a member of my family has changed my thinking. No

crematory container was even mentioned or offered to me. My only recourse was to purchase a regular casket. An Arkansas No. 3 casket, the cheapest one offered to me, was purchased for \$723. The services rendered with the purchase of this casket were minimal—no viewing or visitation services were used by me.

Such manipulation of grieving persons by the funeral industry when they are in a position of no recourse evidently will require Federal regulation in order to stop such unethical practices, as I see this situation.

In a recent telephone conversation with this individual she said to my associate, Mrs. Messer, and I quote again:

If I were physically able to come to Washington I would, so Congress could hear my story. Let me know if there's anything I can do for the AARP or that AARP can do to make sure other widows don't overpay to bury their husbands. I urge AARP to continue exposing this racket with all their available means.

This is a lady who does not believe in Federal Government regulation of business.

The FTC is trying to allow such older consumers to make the type of funeral arrangements they desire at the price they desire rather than that which is forced on disadvantaged consumers by some in the funeral industry.

Since the passage of Congressman Russo's amendment we have received approximately 5,500 letters from our members inquiring how their Member of Congress voted on this amendment. Their message is clear—they are vitally concerned about the fate of the FTC funeral rule.

Mr. Gore, that concludes my statement. I would be happy to answer any questions you or staff members might have.

[Testimony resumes on p. 223.]

[Mr. Hughes' prepared statement follows:]

TESTIMONY OF THE NATIONAL RETIRED TEACHERS ASSOCIATION

AND THE AMERICAN ASSOCIATION OF RETIRED PERSONS

Mr. Chairman:

I am Peter W. Hughes, Legislative Counsel for the National Retired Teachers Association and the American Association of Retired Persons. With me this afternoon is Betsy Messer a Legislative Representative for the Associations. Although we are not pleased with the circumstances that necessitate this hearing, we do appreciate the opportunity this Subcommittee has allowed so that the Associations can reaffirm our involvement, commitment and vigorous support for the Federal Trade Commission's Trade Regulation Rule on Funeral Industry practices.

At the outset, we would like to emphasize our strong support for efforts by the Federal Trade Commission to protect consumers, particularly older consumers, from unfair methods of competition and unfair or deceptive practices which inflate the costs which persons must pay. Given their relatively fixed and limited income and the impact that high rate inflation is having on the purchasing power that that income represents, the elderly tend to be hurt the most by anti-competitive, cost and price promoting practices. In addition, older persons tend to be more vulnerable to and less able to afford the financial hardship of fraud and deception in the marketplace. The Funeral Rule reflects such an effort on the part of the Federal Trade Commission.

It is with a sense of deja vu that we are testifying on the Funeral Rule. It was at the urging of our members that in 1975 NRTA/AARP became actively involved in trying to do something about the high cost of funerals and it is their interest and concern that has kept us involved ever since. Over the years, Association members, volunteer leaders and staff committed untold effort and time toward achieving what appeared to finally be the end of a long rulemaking process.

The Funeral Rule is now in serious jeopardy due to a favorable vote on the Russo Amendment to HR2313, the FTC Authorization bill, by the House of Representatives on November 14, 1979. If there is one message that we can leave with this Subcommittee today, it is that the FTC Funeral Rule is not a case of "overregulation" but rather a much needed straight forward disclosure rule.

The Funeral Rule: NRTA/AARP Involvement

The Associations not only actively participated in the rulemaking process but our involvement precedes the FTC proposed rule. A detailed background account is necessary to fully understand our commitment.

Prior to publication of a Proposed Trade Regulation Rule for the funeral industry, the Associations had published an article in the April 1975 issue of AARP's magazine,

Modern Maturity, which dealt with the high cost of funerals. Sixteen thousand letters were received from our members in response to that article. As of that date, that was the largest reader response to any story. In June, 1975, the Associations began looking into the problem in Florida with the state regulatory board of Funeral Directors and Embalmers.

On August 20, 1975, the Federal Trade Commission announced its proposed Trade Regulation Rule dealing primarily with regulation of the Funeral Home Industry by state boards governing this industry. Our Associations were naturally interested in being involved in this rule process as a result of the interest on the part of our members regarding this subject.

Our involvement in this particular Trade Regulation Rule turned out to be extensive. It began with a call for comment by the FTC which requested industry, consumer and other groups for comments. Based on the considerable background information provided by our membership, the Associations, recognizing how important this issue was for older Americans, set out to determine the views of our membership on the specific portions of the FTC Funeral Rule, such as requirement of casket for cremation, restrictive state laws which apply to funeral directors and embalmers, public membership on regulatory boards in state legislatures and governing bodies, etc.

To inform our members of the intent of the proposed rule for the funeral industry, we printed a number of informative articles in our publications and provided general information sheets through the Associations State Legislative Program. After our members had received information regarding the purpose of the Proposed Trade Rule, they expressed their strong support for such an action. Based on concerns of our membership, we requested official designation as an interested party in the rule-making proceeding. We filed comments identifying issues of fact as well as participated in most of the regional hearings.

Association staff was also researching this issue. Our staff economist, Thomas Borzilleri, prepared a detailed paper entitled The High Cost of Dying. This paper was designed to provide Association policy options that would work in the direction of reducing the high financial burden imposed on the elderly who must purchase these goods and services.

For our involvement in the rulemaking process, other background position papers were prepared as well as analyses of the trade rule and how these proposals would effect consumers, particularly elderly consumers. A considerable amount of time was spent briefing and writing background materials for witnesses who testified at the

various regional hearings.

During this entire time the NRTA/AARP publications reported the status of the hearings and of our involvement. This coverage generated a considerable amount of mail to our legislative department. Many of these letters contained specific consumer complaints. In an attempt to deal with these consumer problems, we were often in direct contact with local funeral directors and state regulatory boards. This experience pointed out, in our view, the inadequacy of existing state regulation and the need for the FTC Rule.

Throughout this period, our involvement was extensive and we believe necessary and productive. Our involvement did not stop once the FTC initial comment period was over. We followed through with comments on the recommended rule on September 1, 1978, and testified at the oral argument on the rule before the Commission on February 27, 1979.

Ongoing NRTA/AARP Activity

Despite the length of time that has passed since the investigation and our mass membership reaction, NRTA/AARP members have not remained silent on the subject. Our staff in Washington and in the field still receive complaints about funerals. Some members have expressed concern over the timeliness of the rule and whether or not they will be able to benefit from it in time. And,

most tragically, they continue to worry about the high costs of funerals and whether or not they or their families can afford the services.

Based on our ongoing concern on this issue, the Associations have established a pilot consumer education project designed to give our members the information they need in order to be better prepared and knowledgeable about funerals. This project would augment a final FTC Funeral Rule.

The Antiregulatory Wave and the Russo Amendment

Toward the end of the rulemaking process, it had become apparent that the Funeral Rule was fast becoming a target of the antiregulatory mood prevalent both in and out of Washington. Any troubles the proposed rule had previously would pale beside the onslaught which culminated in the House of Representatives overwhelming acceptance of the Russo Amendment to terminate the FTC's rulemaking for the funeral industry on November 14, 1979.

The Associations find it hard to believe that 223 Members of Congress felt that the Funeral Rule was a clear example of the federal government overregulating industry. The Congressional antiregulatory mood has unfortunately become so indiscriminating that if the label "overregulation" or "consumer protection" attaches

to a bill, it is almost automatically prejudiced, without regard to its merits. We do not think that many of those who voted with Rep. Russo had clearly separated out the merits of the Funeral Rule and its positive effects on their constituents versus the funeral industry's use of the popular criticism that regulation drives up the costs of doing business and is inflationary. We think that this antiregulatory fervor contributed significantly to the success of the Russo Amendment.

The reason we feel this way is because NRTA/AARP strongly support the view that government regulation in many cases imposes high and unnecessary costs, lowers productivity and drives up prices. This type of regulation is inflationary and older persons stand to be hurt the most by inflated costs due to unnecessary or excessive regulation.

But we also know that not all regulation is unnecessary, anti-competitive and inflationary. It is our firm belief that the regulation of the funeral industry as proposed by FTC will have the opposite effect than is generally assumed in this deregulatory era. The Rule will lower costs by promoting price competition. Our belief is based on two characteristics of the funeral purchase.

First, for retired persons, the likelihood is that the expense of a funeral will constitute their largest single purchase in their remaining years. This expense is very different from any other major purchase, such as a home, car or furniture, because it is a purchase that is made quickly during a time of extreme emotion and vulnerability. The infrequency and the nature of this purchase make it dissimilar from any other and makes the consumer susceptible to abuses.

Second, the funeral industry is basically a non-price competitive industry. It is anti-competitive practices that drive up prices and maintain them at artificial levels, which must be borne by the consumer. Competition is further inhibited by inadequate state regulations which fail to mandate useful and necessary price information.

The purpose of the Funeral Rule is to increase the availability of consumer information -- options, prices and legal requirements. We believe, this increased information will contribute to greater competition in the funeral industry and lower prices for consumers. The more knowledgeable the consumer is about what is and is not required by state law and what the costs are of each component of a funeral, the more likely he will only receive and pay for services he desires.

The key word is choice. In this noncompetitive market, the consumer has limited choices and his situation is aggravated by a lack of information. If he is informed about prices and alternatives and spends a great sum of money on a funeral, then he has done so out of choice and not out of ignorance or manipulation.

For the funeral industry to say that federal regulation of their industry is overregulation, i.e., excessive, unnecessary, and inflationary, is an erroneous and fallacious argument for an industry where price competition does not exist and existing state regulation is more beneficial to industry members than to consumers.

A straight forward disclosure-oriented rule is not excessive. Most other businesses will quote prices when requested and allow the consumer to pick and choose among their goods and services. While the funeral industry may argue that it makes price information available, it fails to do so in a meaningful and useful method. Written itemized price information is rarely available at the outset of the funeral transaction. In addition, the Rule does not preempt state laws which are similar or stronger than the FTC's.

If the industry was more competitive there would probably be no need for regulation because services would be produced at lower cost and prices would be lower. If

existing state regulation was more oriented toward the user of the goods and services instead of the seller, then there would probably be no need for regulation. The Rule is necessary to instill price competition and to make available adequate price information to consumers.

It is the lack of price competition that is inflationary and not the FTC Rule. The Rule would have the effect of lowering the price of funerals by increasing price competition among funeral homes. Despite industry claims, this Rule has been specifically designed to keep compliance costs at a minimum. Compliance costs in this case must be seen as trivial when compared to the potential savings for consumers.

Conclusion

NRTA/AARP's record of support for the FTC Funeral Rule is long standing. For our 12.6 million members, it will be a sad day if Congress decides to terminate the Rule based on an argument that is grossly misplaced. The Funeral Rule is not overregulation. We would like to reiterate our appeal that Congress examine the Rule in the context of its merits, its record and its potential savings for those who can ill afford thousands of dollars worth of needless and unwanted funeral services.

I would like to close this testimony by quoting one of our members who was forced to purchase a much more expensive funeral for her husband than they had both wanted or needed. Hers is not a "horror story" but a plea to put an end to, as she puts it, "victim rip-offs". She has now gone to another funeral home and made arrangements for her own funeral at a cost approximately half that of her husband's for identical services. Her experience was expensive and needless.

Her letter says "...Usually I am opposed to government regulations on private businesses. But having just recently been pressured by the funeral industry into the purchase of a casket for cremation of a member of my family, has changed my thinking. No crematory container was even mentioned/offered to me. My only recourse was to purchase a regular casket. An Arkansas \$3 casket, the cheapest one offered to me, was purchased for \$723.00. The services rendered with the purchase of this casket were minimal -- no viewing or visitation services were used by me.

Such manipulation of grieving persons by the funeral industry when they are in a position of no recourse, evidently will require federal regulations in order to stop such

unethical practices, as I see this situation..."

In a recent telephone conversation with her she said, "If I were physically able to come to Washington I would, so Congress could hear my story. Let me know if there's anything I can do for the AARP or that AARP can do to make sure other widows don't overpay to bury their husbands. I urge AARP to continue exposing this racket with all their available means."

The FTC is trying to allow such older consumers to make the type of funeral arrangements they desire at the price they desire rather than that which is forced on disadvantaged consumers by the funeral industry.

Since passage of the Russo Amendment we have received approximately 5,500 letters from our members inquiring how their Member of Congress voted on the Amendment. Their message is clear, they are vitally concerned about the FTC Funeral Rule. Our Associations have vigorously supported this FTC Rule and implore Congress not to foil it.

Mr. GORE. Thank you very much.

The funeral industry says that consumers are generally satisfied with the way things are now. They point to the lower number of complaints as evidence of that fact. Do you agree or disagree?

Mr. HUGHES. I disagree. In the interest of time, I skipped over a section of our testimony that ran from page 2 to page 6, which was really an historical background of our continued involvement and how we got involved in this issue in 1975.

In 1975, our bimonthly publication, *Modern Maturity* magazine, which has a readership in excess of 12 million persons, ran an article which dealt with the high cost of funerals. In response to that article we received 16,000 letters, many of which—not all of which but most of which—contained complaints or concerns about the high cost of funerals or the practices of the funeral industry.

We received, as I just indicated, 5,500 letters from our members wanting to know how their Members of Congress voted on the Russo amendment, in response to an article which we ran in our news bulletin saying that a vote in favor of the Russo amendment was a vote against the associations' position. Since receiving those approximately 5,500 letters from concerned members, we have received a number of copies of letters—one from which I just quoted from the lady in Little Rock, Ark.—they had written to their Members of Congress, either thanking them for voting against the Russo amendment or asking them to explain why they voted for it.

In questioning the previous witness, Mr. Lent kept referring to the fact that all this was based on six, seven, or eight letters. That figure keeps being thrown around in the continuing argument over whether or not the FTC has overstepped its bounds or if there is really a problem or a need. I do not know where they get the six, seven, or eight letters. We received 16,000 letters. We sent many of those to the FTC.

Even Mr. Russo, I believe, in the debate on the floor—in response to a comment made by Congressman John Burton—admitted that it was in excess of 2,000 letters. That is not an insignificant number of consumer complaints. We all know that for every letter of complaint you get there are probably 10, 15, or 20 people out there who wanted to write but never got around to it. Therefore, I do not know where the six, seven, or eight letters come from.

Mr. GORE. I think those were the letters that were in the original file at the FTC at the time they began.

Mr. HUGHES. Since then I think there has been a great deal of expression on the part of consumers and consumer groups that there is a problem and it needs to be dealt with.

Mr. GORE. Let me ask you another question.

This woman who wrote you about the requirement that she purchase a casket even though the deceased member of her family was cremated—was she required by the funeral home to purchase that casket as part of a package deal or do you know the details on that?

Mrs. MEYER. She sent us her bill. It was broken into \$723 for the casket and services, et cetera, were lumped separately, which she said she did not receive.

In talking to her on the phone she said that the funeral director alluded to the fact that she had to have a casket for cremation.

When she went to another funeral director, where she is making her own arrangements, they had crematory boxes. That is how she found out that caskets were not required for cremation.

Mr. HUGHES. I think her major complaint, Mr. Gore, was that she was told that the law required that she must purchase a casket for cremation. She was not informed of the availability of a cardboard cremation container, box, or whatever they call it in the industry, at a much lesser cost.

The individual is a member of our associations. We had called her in connection with this hearing because her letter was so articulate and pointed out, we thought, such a perfect example of the concern on the part of consumers and what was happening to consumers, particularly from the standpoint of a person who began her letter by saying she has always been against Federal Government regulation. Then she calls for it in response to what had happened to her. She would make an excellent witness on behalf of our association. Unfortunately, she is physically unable to come to Washington.

I am sure that if the committee staff wanted to contact the individual involved to get further details as to her problem or further illumination as to what happened she would be most willing to talk with counsel on the phone or put something in writing for the committee's records.

Mr. GORE. When you originally testified, your organization was critical of several aspects of the FTC's proposal. Is that not correct?

Mr. HUGHES. Not when we originally testified. When we originally became involved, no. If you are referring to the rule as first published, the proposed rule, we were critical. Even though as a consumer group we had been the strongest supporter of the FTC's activities, we felt that it was going overboard. We felt that it should be modified. We felt it should be watered down and that it was a little overzealous perhaps.

Mr. GORE. They subsequently modified the rule extensively.

Mr. HUGHES. It was modified, yes. In my prepared statement I referred to the minimal regulation which is being proposed. I really do not see why anybody would object to price disclosure prior to the purchase of the service, why anyone would object to disclosing prices over the phone, or why anyone would object to contacting a member of the family before performing embalming.

I say all these things not as a rabid consumer representative. I might point out that my paternal grandfather, 1 of my 13 uncles, and 2 of my 51 first cousins were or are funeral directors. My father was brought up living over a funeral home in upstate New York.

Mr. GORE. Oh, is that right?

Mr. HUGHES. Yes. I have some familiarity with the industry. I know what goes on. I know that my grandfather, my uncle, and I hope my cousins although I do not know them as well, were honest funeral directors and ran it as a family business.

This is not an indictment of all funeral directors or the industry as a whole. But there are some who use deceptive methods. There are some who overprice. There are some who overcharge and some who do not disclose.

I think it has been proven that the States have not adequately regulated the industry. Generally the regulatory groups in the State are controlled by the industry. This minimal effort by the FTC is needed as a consumer protection option.

Mr. GORE. Mr. Lent?

Mr. LENT. Thank you, Mr. Chairman.

Mr. Hughes, on page 1 of your prepared statement you emphasize your strong support for FTC efforts to protect consumers from unfair or deceptive practices which inflate costs which persons must pay.

Mr. HUGHES. That is correct.

Mr. LENT. You then go on to support price itemization by the funeral industry.

The National Selected Morticians in its testimony today has a survey showing that in Virginia and Texas price itemization has had the effect of driving up prices of lower priced funerals.

Therefore, my question is: Why would your organization support price itemization?

Mr. HUGHES. We support it and we would continue to support it because I have not seen their studies, I do not know the methodology employed in their studies, and I do not know that the conclusions of their studies are correct.

Mr. LENT. The FTC presiding officer said the same thing. He admitted as much. Where unit pricing is concerned, price itemization has the effect of driving up the price of lower priced funerals.

Mr. HUGHES. I have not seen the studies, Mr. Lent, so I am sorry that I cannot comment.

Mr. LENT. You do not believe in exaggerating. I certainly commend that.

On page 3 of your prepared testimony you say that 16,000 letters were received from your members in response to an article you ran on the high cost of funerals. You made a similar allegation when you appeared before the House Small Business Committee on January 22, 1976.

Mr. HUGHES. That is correct.

Mr. LENT. You maintain today that you received 16,000 letters.

Mr. HUGHES. That is correct.

Mr. LENT. However, when the majority and minority counsel of that Subcommittee on Small Business made a physical inspection of your offices on April 22, 1976, they were able to find only 462 letters and ascertained that many of those were not substantive complaints.

How do you respond to that?

Mr. HUGHES. I cannot account for that discrepancy.

Mr. GORE. Incidentally, for the record who was the chairman of that Small Business Subcommittee?

Mr. LENT. Congressman Hungate of Missouri, I think.

Mr. HUGHES. Mr. Lent, I am told the 16,000 was in response to the article which appeared in Modern Maturity magazine. The letters that the counsel of the Small Business Committee looked at were letters that were written in response to an article which appeared in our monthly news bulletin asking for comments concerning the proposed FTC rule on funerals. There were two separate things.

Mr. LENT. The subcommittee report, Report No. 94-1761, indicates that those counsel were only able to come up with 462 letters. I do not know if it was pointed out to them that in another file cabinet you had 16,000 letters in response to an article.

Mr. HUGHES. What year was it that they came?

Mr. LENT. That was 1976, April 22, that they came to the office.

Mrs. MESSER. I would just like to separate out the two.

Mr. LENT. The article was 1974.

Mrs. MESSER. Our article.

Mr. LENT. Your article.

Mrs. MESSER. Right.

Mr. LENT. In 1976, checking on it, and I do not know why because I was not around at that time and I was not on that subcommittee, but for whatever reason they sent the counsel down there, both sides. Their report says they only found 462 letters.

Mrs. MESSER. I am familiar with that.

Mr. LENT. They say, "At the time AARP had 462 letters." A memorandum counsel filed with the subcommittee states in part, "Many of the letters were not substantive complaints. For example, someone would write in and say they agreed that funeral prices were too high and someone would cite no personal experience. Others wrote in requesting information on memorial societies."

Mrs. MESSER. I was not involved in this issue at the associations at the time. By going through what records we have at the associations, it appears to me that 16,000 responses to the article are quite separate from the letters that the counsel investigated at the association. I understand that the counsel was examining letters received on the FTC rule and not the article.

Mr. HUGHES. I was not aware that they were even there until this point came up in the debate.

Mr. LENT. These fellows went down to your office to look at these 16,000 letters to dig up evidence for the subcommittee.

Mr. HUGHES. It appears that they came 18 months to 2 years after the article appeared. I doubt very much that we would keep 16,000 letters in a filing cabinet for their perusal. I do not know what happened to the letters.

Mr. LENT. They came down about the time you testified there were 16,000 letters. Therefore, I presume you would not have testified there were 16,000 letters unless you had perused some files. Now you are saying there were no files.

Mr. HUGHES. No, I am not saying that. I am saying I am not sure—if we get a response over a 2- or 3-month period to an article, which would be a normal thing, those pieces of correspondence in response to an article would normally be answered by the publications department with a postcard response. They might tabulate how many they receive. That does not mean that we would have 16,000 letters in a filing cabinet some place or in 30 filing cabinets some place. We don't normally do that any more than a Member of Congress—keeps all his correspondence from a constituent. We keep it for a 2-month period.

I do not know because I was not personally involved, but I would suggest that when the counsel from the Small Business Subcommittee came down that the counsel were shown what letters we had in the office at that time.

Mr. LENT. You are still talking 16,000 letters in today's testimony, 1980.

Mr. HUGHES. It is based on what was said earlier, Mr. Lent.

Mr. LENT. You say 16,000 letters were received. That is based on—

Mr. HUGHES. That was based on historical documents from our association. That is all I can say.

Mr. LENT. Perhaps it is a small point. Let me pass onto something else.

During its hearings on the funeral industry rule the House Small Business Committee concluded that the more we impose bureaucratic regulations on any industry, the more difficult we make it for the small operator to continue to exist. I believe that driving small businessmen out of business will obviously lessen competition and drive up prices of funerals.

Would you like to comment on that?

We are constantly hearing from our small business organizations about the blizzard of paperwork, the rules and regulations. Indeed, many of the small funeral operations in my home State of New York, which is quite heavily regulated—

Mr. HUGHES. That is where my family's funeral business is, in New York State.

Mr. LENT. They complain about this and say they are going out of business. Their children do not want to carry on the business. They go out of business. Then the big guys come in and take over, the syndicates. Then they run it.

I hate to see the heavy weight of the Federal bureaucracy start to lean on these small one- and two-man family businesses in New York State. I hate to see them be pushed away.

I think that ultimately we are going to hurt the senior citizens, the very people that you hope to represent.

Mr. HUGHES. I could not agree more that overregulation and burdensome regulation, which drives up the cost of doing business or drives the small storefront mom and pop, family business—be it a funeral business or a grocery store or a construction company—out of business and out of the competitive market is bad. Our associations have consistently taken that position.

We have been against regulation Q. We have been against regulation of the airlines. We have been against regulation of the trucking industry. We have been against regulation where it has precluded competitive practices and created monopolies or become burdensome.

It is our belief and our understanding that this minimal rule that is being proposed by the FTC to fill a gap that has been left by the States would not be burdensome and would not require undue amounts of paperwork, added cost, or other expense. It simply requires that they explain to the consumer what the price for various services is. It does not preclude that you offer a package deal in response to your question about the price itemization increasing cost.

It requires that they not embalm a body without getting the permission of the immediate family. Some people do not want the body embalmed. For religious reasons some people do not believe in embalming.

Mr. LENT. Some people do not even want to talk about it.

Mr. HUGHES. Some people do not even want to talk about it; that is correct.

In some instances it is unnecessary. We all know that.

I could not agree more that overly burdensome regulation is a bad thing for the small businessman. We are not out to get the small businessman. We are not out to get the funeral industry. We are out to protect the consumer.

We continue to get complaints and letters from our members even though we have not run any articles. We were criticized for the articles we ran in our news bulletins as being negative and only asking for negative comments. We have not run articles in a long time except on the Russo amendment vote. We continue to get communiques from our members complaining about their experiences or the high cost or they were not given enough information.

We all know there has been misrepresentation. The complaints that have come in have documented the need. That is the position of our associations. We can argue about it until the end of the year, but that is what we believe.

Mr. LENT. You agree then that the number of complaints is a significant basis for Federal rulemaking?

Mr. HUGHES. We believe so, yes.

Mr. LENT. The fact that the FTC only received six or seven complaint letters before they started their rulemaking proceedings, does not bother you at all?

Mr. HUGHES. What bothers me is that the consumers who have had a problem are getting absolutely no recourse in terms of State regulation. If the States are not going to do it, then I think the Federal Trade Commission, as charged by the Congress of the United States, has not only the right but the duty to step in and promulgate some rules to deal with the problem.

We keep hearing about the six or seven letters. Mr. Gore and I got into this before you were able to come back into the hearing. He explained to me what you meant by that. I understand that.

I believe this came out in questioning the previous witness. Since that time there has been considerably more than six or seven letters of complaint from consumers pointing out abuses.

I do not know if you were here when I referred to the fact that Mr. Russo, in response to Mr. John Burton of California in the debate on the floor, admitted that it was in excess—although he used the 6, 7, or 8 earlier in debate—of 2,000. We all know that for every 1 person who writes with a complaint there are 10, 15, or 20 out there who wanted to write but never got around to it.

Mr. LENT. When you talk about how many letters, you also must consider over what period of time they were received.

Mr. HUGHES. That is true. However, the question is: Is there a problem?

Mr. LENT. I would like to clarify the record. My understanding is this. Please correct me if I am wrong. The FTC staff indicated that at the time they initiated the investigation they only had received six or seven letters. That was it.

Mr. HUGHES. I am aware of that.

Mr. LENT. Then after they started this rulemaking and investigation proceeding, over a period of 5 years they received another 600

or 700 letters, which is understandable because this type of a proceeding tends to generate comments from the public.

A little earlier, one of the witnesses testified that there were 600 or 700 complaints about funerals. We were calculating up here that this was over a 5-year period. During that 5-year period, something like 10 million funerals took place. Therefore, if you only had 600 or 700 complaints with respect to 10 million transactions in the marketplace, that is a rather low, almost insignificant, perhaps de minimis type of response. I indicated in my opening statement it is one ten-thousandths of 1 percent complaint on the number of transactions. I wish I could run my business that well.

Mr. HUGHES. I wondered about that. I am glad you explained where you got that.

I understand that from your standpoint as a Member of Congress serving on an oversight subcommittee you want to look at the way in which they did it. However, my concern is, is there a problem and is that problem being dealt with. Is it necessary for that problem to be dealt with at the Federal level? Our associations believe that it is.

Mr. LENT. Have you made any effort at the State level to have the State boards affecting funeral establishments strengthened? For example, have you turned over any of these 16,000 or however many letters you have received to State regulatory or enforcement agencies?

Mr. HUGHES. No. All of our efforts to date, Mr. Lent, have been at the Federal level. I should not say "all." Our associations have State legislative committees in every State and the District of Columbia which are made up of volunteer members of the associations. My staff provides technical expertise, advice, and logistical support to the volunteers. Within guidelines established by our board of directors those committees decide which issues they want to work on at the State level for any given legislative year.

In some instances I believe they have worked on legislation involving the funeral industry. I believe in Florida they have done some work on this.

I will promise you, however, that if the Russo amendment prevails, it will be a priority of all 51 State legislative committees to get what the FTC is proposing at the Federal level enacted at the State level. By the way, we are going to start in Illinois.

Mr. LENT. I think that might be the way to proceed, frankly. I realize it is attractive to reach for Uncle Sam and say, "Let's go to the Federal Government and we will have a law passed." It does not always happen that way. We have a whole wilderness of statutes, rules, and regulations out there. Our senior citizens as much as other consumers are paying the price. I understand it is something like \$2,000 per family Americans are paying today just for the cost of Federal regulation.

Mr. HUGHES. I agree. I think in most instances it is the philosophy of our associations' leadership, which is why we started the State legislative program, to look to the States to do those things which the States properly should do or could do. We take that position with regard to hospital cost containment, for instance.

Unfortunately, quite often the States do not deal with these responsibilities. Then our position is if they do not, you must look to the Federal Government.

I note again the whole issue of medigap insurance and the regulation of the sale of medigap insurance. The States are not doing what they should be doing.

It is not just the funeral industry. It is the health care industry. It is the insurance industry.

Mr. LENT. Medigap insurance is something in interstate commerce. It is advertised—

Mr. HUGHES. But the State people tell you that has traditionally been the prerogative of the States to regulate insurance through State insurance commissions, much more than they will tell you that it is their prerogative to regulate the funeral industry.

Why look to the States to do it? State agencies that regulate the funeral industry have known for years that this was being looked at by the Congress and by the Federal Trade Commission. Consumer groups at the national level were creating some waves about it. They still have not done anything.

Mr. LENT. If you were to put the tremendous resources of the entire association NRTA/AARP to bear on this in some of the State legislatures, you would find in many cases you would get much quicker and readier response because then you would be dealing with a unit of government which is peculiarly best suited to deal with that type of regulation, rather than the Congress of the United States.

Many who voted against FTC regulation of the funeral industry do not deny the charge that there might have been some abuses, but they voted on the basis that this is not the route we should take at the present time. This is an industry which should be regulated at the local level, as San Ervin said. This is a very obvious type of industry which has no business being regulated by the Feds.

Mr. HUGHES. It is a point well taken. We will pursue it on both fronts, both the State and the Federal levels.

I recognized in my formal statement that the vote as reflected by the 223 Members of Congress who voted for Mr. Russo's amendment did not necessarily mean they did not realize what was going on vis-a-vis the funeral industry, older people, consumers, and the regulation. However, in many instances it was more the antiregulation by the Federal Government and the FTC mood of Congress.

My last point is this: Senator Ervin said that in 1964, was it? We are now in 1980, and the States still have not regulated 16 years later. I would have agreed with him in 1964 and I agree with him in 1980, but they have not done it in 16 years. That is why we are taking the position we are taking.

Mr. LENT. I have no further questions.

Mr. GORE. I might refer again to the appendix to the testimony of the witnesses from the FTC which outlines in some detail what regulations currently do exist at the State level.

I would like to thank you for your testimony here today. You have the thanks of the subcommittee for helping us in our efforts to understand this better.

Our next witnesses will be Royal Keith, president, 1977-78, National Funeral Directors Association, from Yakima, Wash., and Eric R. Trimble, president of the Illinois Funeral Directors Association.

Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KEITH. I do.

Mr. TRIMBLE. I do.

Mr. GORE. Thank you and welcome.

Both of you have prepared statements, don't you?

Mr. KEITH. Yes, we do.

Mr. GORE. Without objection, the entire text of your statement will be inserted in the record. [See p. 237.] Please feel free to proceed with your statement.

TESTIMONY OF ROYAL KEITH, PAST PRESIDENT, NATIONAL FUNERAL DIRECTORS ASSOCIATION, AND ERIC R. TRIMBLE, PRESIDENT, ILLINOIS FUNERAL DIRECTORS ASSOCIATION

Mr. KEITH. Thank you, Congressman Gore.

If I could, I would like to open with a brief oral statement. As you have noted, there is a complete statement that will be on file with you.

My name is Royal Keith. I am a licensed funeral director and embalmer in Yakima, Wash. I am one of the owners of a funeral home there in Yakima. I have been practicing funeral service for over 20 years. In addition to that, I have served as president of the Washington State Funeral Directors Association and am a past president of the National Funeral Directors Association.

I would like to deviate from that which I have submitted in writing because there were some points made by Mr. Kramer in his earlier comments before this committee. I would like to correct some misimpressions that were given.

First of all, and it came up again in the testimony of Mr. Hughes, there is the statement that nothing has been done since 1964 when Senator Hart had the hearings. Then the Federal Trade Commission, finally in 1972, decided to do something. That is completely erroneous.

There have been substantial changes in the State regulatory laws in most States. In addition, our own national association adopted a code of professional practices in 1965. NSM will be submitting testimony later about their own code of professional practices. Therefore, the erroneous impression that nothing has been done since 1964 should be corrected for the record.

Second, when the question was asked of Mr. Kramer, "How long has this rulemaking procedure been going on?" the response was 4 years. Again, he should be corrected. They began their investigation in 1972. The investigation was put into the Magnuson-Moss rulemaking procedure after that law was passed in January 1975. Therefore, they have been operating under the rulemaking procedure for over 4 years, but they actually have been involved in this investigation for 8 years.

The third misimpression is that guidelines NFDA submitted to the Federal Trade Commission in 1974 endorsed by NSM were fully commented upon by the staff. That again is erroneous. I guess Mr.

Kramer, because he was not part of the staff at that time, nor was Mr. Rodemeyer, can be forgiven for this error.

The only comments our association received regarding those guidelines was a brief letter from the then-managing attorney stating that they would submit more formal comments on our guideline proposal at a later time. That was 4 years ago. We have not received formal replies from the Federal Trade Commission in our efforts to establish guidelines that would be implemented at the State level and carried out by the existing State regulatory bodies.

Another misimpression that Mr. Kramer gave was when he said the vast majority of the funeral transactions are by a single-package or single-unit quotation methods. Again, I do not believe he has checked the latest facts. The majority of the funeral transactions today in the United States are in some form of breakdown of the charges, either in itemization, biunit quotation method, or by what we call a functional quotation method. Therefore, it is incorrect for Mr. Kramer to say that the vast majority are single-unit situations.

Mr. GORE. I would like to interject there.

Do you mean that the majority receive a bill which itemizes separate charges?

Mr. KEITH. Yes, in some form. We cannot call it itemization. There are some States that have various requirements on the breakdown of the charges, some that do not exactly match what the Federal Trade Commission is suggesting in this proposed rule. However, there are 43 States now that have regulations which require the funeral director to provide a full disclosure of what prices are and offer the opportunity to the consumer to decline any services that he or she does not wish to purchase from that funeral director.

Mr. GORE. I do not want to interrupt your statement, but this is directly at odds with the testimony just received from the FTC. According to the FTC, there are five States, and only five States, which require preselection itemized price lists. You say there are 42 States?

Mr. KEITH. Forty-three States require some form of full disclosure—

Mr. GORE. After the fact? After the purchase is made?

Mr. KEITH. After the purchase is made.

Mr. GORE. There is a big difference.

Mr. KEITH. Before the services are performed, however.

Mr. GORE. But after the purchase is made?

Mr. KEITH. After the transaction is completed, then the full disclosure of that price is given, yes. In fact, about 90 percent of the funeral homes use a written contract entered into at the time of the arrangements.

Mr. GORE. Please proceed.

Mr. KEITH. Finally, it has been stated several times that there is an absence of consumer information. NFDA; along with our State associations, has been aggressive in trying to get out consumer information on funerals and funeral costs. The most recent example has been an article that appeared in *Changing Times* where we offered free of charge to any consumer who wished some brochures. We had over 4,000 responses to that. In addition, State associations and individual funeral directors get out their information.

Before introducing my colleague, who will give an overview of some thoughts we have, I wish to go on record as saying that, contrary to what has been erroneously reported during these hearings and elsewhere, funeral directors and their associations are not opposed to complete price disclosure or full and complete consumer information on funerals and funeral costs. In fact, we support this type of regulation, but we support it at the State level.

What we object to in this hearing and in other appearances we have made before committees in Congress is the costly, unnecessary duplication of regulation at the Federal level.

I now introduce Eric Trimble, who is presently the president of the Illinois Funeral Directors Association.

TESTIMONY OF ERIC R. TRIMBLE

Mr. TRIMBLE. Thank you, Mr. Keith.

Mr. Gore and Mr. Lent, I have been a practicing funeral director in Moline, Ill., for 10 years.

On the first day of the most recent hearings on Magnuson-Moss and the Federal Trade Commission on February 13, 1980, subcommittee chairman Congressman Bob Eckhardt of Texas opened the hearings with this statement in which he said:

Today we will seek to find answers to the following questions: (1) What is the impact of abuses by funeral directors on individuals; (2) How widespread are such abuses; and (3) What actions have the States taken to correct any abuses?

If the reports about the testimony of the witnesses for the February 13 session of those hearings are accurate, much of what was said is the same or similar to testimony given during the 59 days of hearings on the proposed funeral rule in 1976. Two of the witnesses who testified during those hearings were also witnesses on February 13. One who prepared a paper to be read was also a witness during the 1976 hearings.

It is over 7 years since the FTC began its investigation of funeral practices. Such investigation tried to find deceptive and unfair practices with sufficient prevalence to warrant a trade regulation rule. One method to achieve this goal was to show abuses through consumer complaints. That method failed.

The following is from the 1978 report of the FTC staff:

The only fair conclusion which can be drawn from the record evidence is that the number of consumer complaints filed against funeral directors is indeed modest and consumers are generally satisfied with the performance of funeral directors.

The unsuccessful attempt to show a prevalence of unfair and deceptive practices and abuses allegedly cost the Federal Government and the taxpayer over \$1.5 million to date. Since August of 1975 when the FTC staff promulgated its first proposed rule for comment, the National Funeral Directors Association spent in excess of \$1.1 million to present its case and to try to counteract the FTC's unwarranted blanket indictment of the entire funeral service profession.

Unjustified charges or implications were picked up by the media presumably based on the FTC staff feeding or leaking information to such media. Frankly, we are being asked if these hearings are not a rehash of what has been said before and included in the thousands of pages of the FTC record on the proposed funeral rule.

Regardless, the negative pervasiveness of the FTC was brought to light during the hearings before the subcommittee of the Senate Commerce Committee last October. During them FTC Chairman Michael Pertschuk said:

There is no question that there are occasions in the past, especially in the early rulemaking proceedings—especially with respect to the funeral rule * * * in which your criticism—that of the Senators—“of junior staff in effect conducting a vendetta against the industries involved—there was some justice in those accusations * * *. There was a sense of a vendetta against the funeral industry in those early days and a feeling on the part of the funeral industry that it was not being heard.

Chairman Pertschuk recently added to the climate of suspicion the staff created. When a statement was made about the Russo amendment during a segment of the “60 Minutes” telecast of February 2, 1980, the FTC Chairman said that there wasn’t a very good match between what funeral director associations told their members about the FTC rule and the truth. The audience of the “60 Minutes” documentary that evening was estimated to be over 32 million people.

We feel that if what our funeral director associations were telling us members was something less than the truth, which we don’t feel they were—and I have been on both sides of the fence, having been a practitioner and being involved at the State level in funeral services—this should have been communicated to the elected and paid leadership by the FTC. Doing this would have permitted inaccuracies to be corrected if they had existed. This should not have been done before an audience of many millions which further polarized the position of the FTC and funeral directors it is unnecessarily seeking to regulate.

On the same television appearance Chairman Pertschuk indicated that “in the last analysis the Commission’s performance must be judged on the basis of the soundness and the quality of the funeral rule * * *.” To paraphrase that statement, the chairman indicated he believes the end should justify the means. This was brought out when “60 Minutes” commentator, Harry Reasoner, observed that “Pertschuk feels the funeral rule should be judged not by the FTC procedures, but by the end result.”

The end justifying the means is the antithesis of due process. We appreciate you gentlemen looking into this very procedure question. The fact that you are holding these hearings indicates your concern and the questions you have regarding those procedures. It is not the way in which this country has functioned. We hope it is not the intent of these hearings to further such a philosophy by acknowledging that the end might not be so bad although the means were legally devoid of due process and regard for the rights of a significant segment of Americans—the funeral directors involved in what is termed “small business.”

In this brief overview we must make clear the following points:

One, the proposed rule is written to regulate “funeral industry practices.” It does not do that. It seeks to regulate only those “funeral service industry members” who are selling or offering for sale to the public funeral services and merchandise. What about direct disposition companies, cemeteries, mausolea, crematories, makers and sellers of funeral merchandise directly to the public and memorial societies?

Two, in all States those engaged in funeral directing/embalming aspect of funeral service are regulated by the State and in some areas by the city. This is closest to the consumer. It is where the regulation belongs. But in many States there is no regulation of all or most of the following: cemeteries, mausolea, direct disposition companies, and those who sell funeral merchandise directly to the public, and memorial societies.

The FTC up to this time apparently has not dealt with this fact. They have, since the resolution for a nonpublic investigation of funeral service passed in July of 1973, disregarded recommendations made to them on how State governments could do what they felt was necessary if in fact State governments were not already doing it.

The FTC apparently continues to insist on duplicity of taxation for regulation of funeral directors at both the Federal and the State levels. It also continues to question values of facets of the funeral and the services of the funeral director. The process has led to a growing suspicion of funeral directors as practitioners. This has become a negative force which destroys instead of builds legitimacy in the marketplace—a force which apparently seeks to substitute crass commercialism for existing competition in a profession whose members approximately 5,000 times each day deal with the sensitivities and sensibilities of those who survive the death of someone loved.

To conclude this brief overview, we concur with the observations Congressman Marty Russo made before his amendment to H.R. 2313 was passed by a decisive vote in the House of Representatives last November 14. They are:

One, the staff of the FTC operated in a biased manner throughout the entire investigation which led to the proposed rule.

Two, the Commission has not compiled a record which details a nationwide pattern of abuse and illegality to which they themselves admit.

Three, the FTC staff continually portrayed industry representatives as uncooperative. This is not true as our position paper will document.

Four, the Federal Trade Commission staff sought out consumer groups to take advantage of public funds participation, yet contacted no one else—for example, minority funeral directors.

Five, materials were incorporated and referred to in the final report which were outside the rulemaking proceeding. This has been discussed this morning.

Six, the FTC staff took well over a year to compile their report summarizing the hearings, yet asked for those interested to comment on the 600-page report in 30 days but granted an additional 30 days shortly before the time to file had expired. The FTC indicated this morning that we had adequate time to respond. I question whether that is adequate time.

Seven, the proceeding was biased and unfair.

To these facts we add that the entire proceeding was an abuse of authority and should not be the basis for any rule.

Members of the subcommittee, we thank you for the opportunity we have of appearing before you today. This overview along with our position paper will be left with your subcommittee for the

[The joint prepared statement of Mr. Keith and Mr. Trimble follows:]

STATEMENT OF ROYAL KEITH AND ERIC R. TRIMBLEThe Purpose Of The Position Paper

This position paper is not a review with comment on any or all of the three versions of a proposed Federal Trade Commission rule for "funeral industry practices" (August, 1975, June, 1978 and amended proposals of February, 1979). Nor will it focus on the modifications/ explanations discussed during oral presentations on the proposed rule on February 27-28, 1979 and a "mark-up" meeting of the Commissioners in the Sunshine held on March 23, 1979. Irrespective of the irregularities of the hearing, comments during it point out the deficiencies and unlawfulness of most of the elements of the proposed rule.

The purpose of this position paper is to give the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce, the Congress, and all who will read the record of these oversight hearings some facts as to the way in which the FTC has used or abused its power generally, and specifically, under the Magnuson-Moss Act during the period from July, 1973 until early last year during which time the FTC staff was conducting its "vendetta" against, if not an inquisition of funerals and funeral directors. During this same period (5 1/2 years) the FTC staff with taxpayers funds and outside of normal FTC proceedings was publicly and non-publicly leveling charges which constituted an unwarranted blanket indictment of funeral service. Although there was a lull in this approach for a time, it is apparent the FTC Chairman and some staff persons are again using the media as a conduit to achieve these goals.

In some instances the staff uses a disclaimer that statements are the personal views of the staff members and not of the Commission. Regardless, the public feels the statements have the imprimatur of the Commission.

Those of us in funeral service, including our manufacturers and suppliers, have also been unjustifiably, irreparably damaged by the procedures followed by the Commission, procedures of which the Congress should be aware.

The FTC Process Regarding The Proposed Funeral Rule And Alleged Economic And Social Disutility

The FEDERAL REGISTER for August 29, 1975 in publishing a proposed rule for funeral service, included the following paragraph. (The FTC vs. Sperry Hutchinson Company decision in 1972 was footnoted.)

"The Commission is proceeding upon the theory that the practices prohibited by Sections 453.2 and 453.4 of the Proposed Rule are unfair if they cause substantial harm (i.e., their economic and social utility to the public is substantially less than their economic and social disutility) and they result from the inequitable use of the superior bargaining position of the funeral service industry member relative to that of consumer buyers. In so doing, the Commission is mindful that its authority to examine and prohibit unfair practices in or affecting commerce has been analogized to the jurisdiction of an equity court."

The underscoring, which is ours, spells out what the FTC apparently was trying to do since it started looking at funeral practices. They, in our opinion, were trying most to show the alleged "social and economic disutility" of funeral practices.

The "study" of the staff which led to the August 28, 1975 press conference and release of that entitled "Funeral Industry Practices: Proposed Trade Regulation and Staff Memorandum" was prejudiced, biased and very limited. House Report No. 94-1761, A Report of the Subcommittee on Activities of Regulatory Agencies of the Committee on Small Business House of Representatives, entitled "Federal Trade Commission's Proposed Funeral Industry Trade Regulation Rule: Its Effect on Small Business" makes some valid observations and spells out some conclusions.

Besides the documentation in this Subcommittee report, there are some other facts your committee and the Congress could undoubtedly be interested in as essential to its oversight function.

The District Of Columbia Survey

The findings of an FTC survey of funeral practices in the District of Columbia were given considerable weight in the funeral rule proceedings. General application was made to data obtained from an area with important demographics which are inconsistent with the balance of the country.

The FTC held a press conference in October of 1973 regarding the survey it was going to conduct in the District of Columbia. NFDA was not invited nor was it even informed of it. It learned about it from the media. This, despite the fact the staff refers to the National Funeral Directors Association as "... the oldest, largest, and most influential (funeral director) association." (1)

As he concluded his statement at the press conference, J. Thomas Roach, who was then Director of Consumer Protection, said:

"With respect to the scope of the inquiry, we have not selected the District of Columbia funeral directors because we think that they are worse, or for that matter better, than other funeral directors.

This is a pilot project whose results we want to assess before moving on a nationwide basis in any form. The D.C. funeral directors are proximate and are, we believe, fairly representative, and they will give up a compact sampling we believe which we can evaluate quickly and efficiently."

Subsequently, HFDA commented to the Commission as follows:

"There are many who take exception to this (Roach) statement. The question that is being asked is whether the funeral practices in the District of Columbia can be representative when one takes into consideration the percentage of white population of the United States contrasted with that of the District; the percentage of black population of the United States when it is contrasted with the District; the percentage of white deaths of the United States contrasted with the percentage of white deaths in the District; and, the percentage of funeral homes owned by whites and of those owned by blacks in the United States contrasted by the percentage of funeral homes owned by blacks and by whites in the District of Columbia.

There are indications also that both as to whites and especially blacks, the per capita income is higher in the District of Columbia than that in any other place in the United States. According to the U.S. Department of Commerce, Bureau of Economic Analysis, United States per capita income in 1972 was \$4,478. Using that statistic as 100%, the District of Columbia per capita earning of \$6,383 was 143% of the national average."

The findings of the District of Columbia survey are referred to a number of times in the Staff Memorandum and proposed rule of August, 1975. It led to some general observations, as well as some specific portions of the first proposed rule and also resulted in action against one (1) District of Columbia funeral firm.

Other Facts About Some Of The Staff Prior To The Hearings On The Proposed Funeral Rule

On July 24, 1973 the Commissioners passed a resolution "directing use of compulsory process in a non-public investigation" of funeral service.

The previously referred to memorandum which accompanied the "rule" released first at a press conference on August 28, 1975 had the following observation in its "Conclusion":

"... Certain consumer problems derive primarily from societal and psychological conditions which are endemic to the bereaved and will change only gradually, along with social mores and societal attitudes. The rule will, however, eliminate serious abuses from the marketplace and arm consumers with information which will help protect them against unfair and deceptive funeral practices in the future." (2)

Many who studied the original memorandum and rule feel one of its purposes was to

reverse the philosophy of immediate post death activities by a revolution not evolution of social mores and societal attitudes.

The process was to try to eliminate a post death rite or ceremony with the body present. For instance, the staff wrote:

"... The funeral director ought not to be allowed to utilize his superior bargaining power to tie purchase of a casket to a service the customer needs - disposition of remains." (Emphasis is ours) (3)

Then they added:

"As we have observed, however, a complete shift to average overhead pricing is not inevitable; funeral directors could, instead, assure themselves of the desired revenue level by increasing the mark-ups applied to caskets." (4)

This position was not new to representatives of funeral service who were present when an FTC staff member said without correction from fellow staff members that funeral directors should "load the (price of the) casket."

Is it not antithetical that any agency of government should in the same or separate documents be critical of the prices charged for an item of merchandise while saying that item's price should be raised by increasing the mark-up on it?

A chain of events could logically be ascribed as the underlying motives of the first rule and memorandum, motives which continued to be evidenced through the staff report of June, 1976 and subsequent statements by former funeral rule staff members.

- . Confuse the funeral arranger either at or before need with a mass of "typed" information to the point of the arranger saying either: "Why bother with all of this?" which the staff implies is "bureaucratic overkill" to be avoided.
- (5) Or, "How can we get it over as quickly as possible?" In the latter instance the move most likely would be to direct disposition. In fact, a reading of the entire document leads to the inescapable conclusion it would be easier to deal initially with a non-funeral director (who would not be saddled with any similar rules) than to deal with a funeral licensee.
- . Raise so many questions about embalming so as to discourage its use and the presence of the body during post-death ceremonies, if there are to be such ceremonies.

- . With no body present there will be little need, if any, for a casket. And if there is little or no need for a casket, how can the funeral firm gain "its desired revenue level by increasing the mark-ups applied to caskets?" (4)
- . The end result perhaps in fewer years than one suspects, would be for death to be a private matter not a societal event. That a new functionary would pre-dominate - one whose sole functions are to transport and dispose of the dead. Then social workers and memorial society personnel would supposedly be the caretakers of those resolving their grief.

If most Americans subscribe to the chain of events spelled out above, fine. But this should not be the result of federal mandates and prohibitions or publicity released directly or leaked indirectly by the staff.

The Attitude And Research Or Lack Of It Reflected Immediately Prior To Or During The Hearings

It is our opinion the staff - including the Presiding Officer as a staff member - did not comply with either the spirit or intent of some of the provisions of Magnuson-Moss. The witnesses they sought and often subsidized hammered away primarily at costs without looking at values. There was no cost vs. benefits analysis. In the process expert witnesses who spoke on such values were held to be suspect during the hearings and in the reports of the Presiding Officer and the staff. Most times this was because at some time the witnesses had received honoraria from a funeral director association(s). The FTC in such a proceeding becomes the prosecutor, the judge and the jury.

The staff "star witnesses" before, during and after the hearings are all known detractors of the funeral. They paid taxpayers money for one such individual to travel to Washington, D.C. to testify in support of the rule, even though she lived in Los Angeles, California where hearings had taken place during the two weeks previous to the Washington, D.C. hearings. The staff was not interested in anyone else, except to try to discredit them, even though they were authorities in no way tainted in the true sense of the word.

An example is that of Dr. David Haun. He did a much publicized study relating to funeral practices "... to see how the bereaved perceive they were most helped and least helped in their sorrow, and how could funeral directors, clergypersons and friends be more

effective in giving assistance to them. . ." (6)

Dr. Mann wrote the FTC and offered information to it. In response to the offer,

Dr. Mann said:

"As I recall, I got back a form letter - I'm sure it was a form, it may not have been - but I got back a letter saying 'We thank you for sending the information,' and that was the last, and so I didn't think any more about it at the time." (7)

Dr. Mann did testify at the Atlanta and Washington hearings at the suggestion of NYMA. Cross-examination by the FTC staff tried to transform that which he said was positive to the negative but without success.

As the hearings went on, the FTC staff felt it wasn't proving its "case" as it had hoped. In at least two instances, FTC witnesses admitted they had not completed their task, presumably because of a last minute assignment.

Economist Chester R. Conradus testified:

" . . . I have been unable to find specific rates of changes, of prices, of either components or packages as a whole through time, and that, I'm sure, is a function of the relatively short period of time that I have had to look into the matter. I certainly have not been able to break out such issues as capital cost and labor cost and land cost and other inputs and weight them approximately to construct an index of my own. I really cannot answer that question adequately." (8)

The transcript continues:

"PRESIDING OFFICER KANE: I would also deduce from that, and correct me if I am wrong, that you are unable to determine the degree to which (funeral home) resources are unutilized or under-utilized."

"THE WITNESS (Chester Conradus): I really don't know that." (9)

" . . . I said an in-depth analysis of the many aspects of the business practices of the funeral industry nationwide or in the State of Washington. If, for example, I were given a number of days to write up a memorandum of problems, I would, for example, attempt to find out whether or not there is a correlation between the price paid for a funeral and the wealth position of either the deceased or the person who purchases the funeral." (10)

Dr. Richard A. Kalish was presumably commissioned to do a survey of clergypersons and parishioners. Dr. Kalish testified:

"We got a lower response rate than we had hoped and a higher response rate than we had feared, so it fell somewhere in between. Most of the responses are on tables in the back of the (questionnaire) paper."

These are some unfortunately that are missing and at this point are probably being carried by a special delivery mailman. We are not investigating the mails in this FTC probe, but somewhere between here and Berkeley because I had the computer output shipped special delivery on Tuesday and as of about 45 minutes ago, it had not arrived.

I have most of the data either in my head or in the tables here. I think the focus was to each individual, each of the members of the congregation who responded to respond in terms of one particular funeral that they had arranged." (11)

The first of these examples taken from the record shows the staff apparently originally disregarded because it would not help them (Dr. David Ham study). The other two indicate that an investigation which started officially in May of 1973 with a memorandum, and a proposed rule released in August of 1975 had unprepared witnesses or last minute findings in June and July of 1976 - one year later.

Attitude Of The Staff Toward Representatives Of NFDA

On January 21, 1976 at Hearings Before the Subcommittee on Activities of Regulatory Agencies of the Committee on Small Business of the House of Representatives, Congressman Marty Russo of the Subcommittee said:

"Every once in a while we have these regulatory reforms and comments by OSHA or the EPA or somebody else. All we have is just confrontation, and as soon as they say we ought to be regulated in effect it looks bad in the eyes of the public. The best thing for the people in the industry, and for the government, is to get together and see if there is any problem. If there is we can work it out no matter what happens. Now, a certain area of our country somebody is going to feel that they are being ripped off no matter what you say to them. The Government is just trying to step into another field they shouldn't be in. I would hope in the future to embark on the practice of getting together before we come out."

NFPA Executive Director, Edward C. Reuther, responded:

"Congressman, we first learned by coincidence the FTC was looking at funerals in November, 1972, when a request was made of our office for information. We immediately said we were available but the matter was dropped by the inquirer who evidently regretted his inquiry. We subsequently proposed guides to the FTC. We were told on at least 2 occasions at meetings the FTC staff would comment in writing on those guides. Included in the guides are the advertising suggestions referred to here in our statement. We were also told that if a trade regulation rule would be proposed, that we would have an opportunity to see that proposed regulation rule before it was sent up to the Commissioners. We were promised a chance to see the staff proposal, to comment on it,

and to also submit our own proposal for guides. That opportunity was never provided us. We found out about it while in the Omaha airport by an article in the WALL STREET JOURNAL. We inquired why the proposal went up to the Commissioners without the opportunity to provide input which had been promised to us.

The answer we got was in effect they forgot to follow through or the person who was supposed to do so, didn't."

This statement made under oath is reflective of the staff attitude and apparent desire not to seek our input prior to the day it was made (January 21, 1976) and continued through the release of the Staff Report of June, 1978.

To expand upon the response given to Congressman Russo, it should be pointed out that NFDA submitted two sets of proposed guides to the FTC staff. Also, it joined the National Selected Morticians in a petition for consideration of the guides. A hearing before the Commissioners on that petition was held on March 12, 1976. At no time prior to or subsequent to that hearing was there any invitation extended to representatives of NFDA to meet with the FTC staff until after the modifications to the rules were made public in February of 1979.

The bias of the then staff and a primary goal it had established for a funeral rule which helped create and then intensify adversarial positions was shown on limitation of witnesses to testify orally, payment of attorney's fees and other expenses to supporters and only supporters of the rule, some of the determinations of the Presiding Officer and the refusal to place the witnesses under oath, even though the witnesses so requested.

There were instances in a session with the Presiding Officer and staff before the hearings got underway which are indicative of what we in NFDA experienced.

The cities for the hearings were being considered at that conference. All hearings were tentatively scheduled for large metropolitan areas where there are FTC offices and staff. Seattle and Los Angeles, both on the West Coast, were recommended. The attitudes toward death and the funeral with proposed alternatives to it are similar in both these areas. This, plus the ongoing relations between the staff and widely publicized funeral reformers, resulted in the suggestion that a southwestern city such as Dallas be substituted for Los Angeles or Seattle. The geographical coverage, as well as that involving funeral practices, would have been more representative. The decision was to hold hearings in Seattle and Los Angeles

as planned. The staff and Presiding Officer would not move away from their original plan.

When dates were being considered, April 19, 1976 was to be the first day of the hearings and they were to be held in New York City. An NFDA representative said, "That's Easter Monday. We'd have to travel on Easter to get to New York." A staff member responded with the question, "What is Easter?" However, in this instance respect for the day important to Christians prevailed and the hearings started on April 20.

This was disdain for representatives of NFDA. There was outright discourteous conduct of some of the staff while some opponents of the rule were testifying. Requests by NFDA representatives to have a room to meet in the U.S. Government buildings in which hearings were being conducted were not granted. At one location of the hearings, New York, the door of the library within a short distance of the hearing room had a specially made sign which read "Off Bounds." It was meant for the attorneys for funeral service. Non-staff persons were denied access to vending machines used by the FTC staff in government buildings. Funeral service representatives were even publicly admonished by a regional FTC office speaking through the Presiding Officer for getting a "coke" from such a machine. The staff ate snacks at supper time in the hearing room during a 9:00 A.M. to 9:32 P.M. session in Los Angeles on June 11, 1976 without affording anyone else the same opportunity. And, often one of the funeral rule staff, not to be confused with the representatives of the Administrative Conference, would talk to an opponent of the rule, most times funeral directors, after he or she had testified. His or her favor would be cultivated. Criticism was leveled by the FTC staff persons at what the attorneys were doing representing the position witnesses were taking. Most of the criticism was directed to the NFDA Counsel and Executive Director. It was clear their motives were being questioned by the staff and their integrity impugned. This was extended to presentations of FTC staff persons at public appearances, including those before groups made up of individuals in facets of funeral service. Messrs. Clark and Raether were unjustifiably criticized.

A Brief Review Of What Some Authorities Say About Death And Immediate Post Death Activities

We think it would be helpful if the record of your hearing includes the following. There are facts and opinions which have not been spelled out by the FTC in order to present

a full circle, unbiased approach to funerals and funeral directors.

"Death with time to prepare is difficult enough, but sudden death inflicts a unique trauma on the survivors." (13)

"Death evokes powerful emotions within us that need to be vented or calmed." (14)

Given the validity of these two statements, it can be said that for many persons death is one of the most traumatic events in the life of survivors - family/group/community.

Because death is no longer a taboo subject, there are various ways on how to prepare for death and its aftermath. In one way or another, survivors manifest grief, bereavement and/or mourning through immediate post-death activities. Therefore, it is important that information relating to the funeral and its alternatives be available, not only when death has or is about to occur, but at any time that a consumer desires to pre-plan his or her funeral or that of another.

In the Preface of his *NEW MEANINGS OF DEATH*, Herman Feifel writes:

"... indeed, new perspectives are imposed on us in grappling with such current phenomena as the changing character and distribution of mortality, the growing secularization of death, the potential for sudden mass death. Most overriding for me, however, was the conviction that in the last analysis all human behavior of consequence is a response to the problem of death. It is the key issue in life. Hegel defined history as being 'what man does with death.' Hence, anything 'more' or 'new' in the field resulting from disciplined study, discerning experience, and compassion is worth a reading." (15)

Part of the answer to the question of what man does with death involves activities which take place immediately following a death such as the funeral or alternative to it. Cassem delineates the following: "grief" which is the impact of loss of an individual, "bereavement" which is a process of accommodation to a specific loss, and "mourning" the reactive process of coping with the loss. (16)

Regardless of whether the selections as to the funeral or an alternative are made prior to or at need, once there has been disposition of the body with or without rites and ceremonies, there are few, if any, opportunities to do that which wasn't done or change that which was. There can be penalties for the funeral director for that deemed in violation of the law. But, such penalties often do not compensate in the sense that those who by

their own actions or that of others have made mistakes of commission or omission, mistakes which will often remain indelible in the psyche of a survivor(s).

We have found that most funeral customs and usages are of religious/ethnic/community/special affiliation (veterans, fraternal and others) orientation. As in all ways of life, some customs as to death are also of less value for some today than for those of previous generations.

These customs and usages are specific manifestations of the following general observations:

"Rites performed for the dead generally have important effects for the living. A funeral ceremony is personal in its focus and is societal in its consequences. The people of every society have a pattern for dealing with the death of their fellows. No matter how unprepared an individual may be for the fact of a particular death, the group must always have some plan of action in the event of death.

Certain things must be done after a death, whether it occurs in a very simple or in a highly complex society. The corpse must be disposed of; those who are bereaved - who are personally shocked and socially disoriented - must be helped to reorient themselves; the whole group must have a known way of readjustment after the loss of one of its members. These things 'must' be done in the sense that they are done. When people find that they have no pattern for dealing with death - as may occur in newly coalesced groups - or when they discover that the former pattern is no longer a feasible one, they tend quickly to establish some clear plan for coping with the occasion of death. . . ." (17)

* * * * *

"Culture and religious beliefs dictate to a large degree the mode in which disposal of the dead will be accomplished. The primary purpose of many of the traditional funeral rites - from ancient times to present - has consistently been to offer solace and a period of healing to survivors. Modern psychiatry and psychology have acknowledged the therapeutic value of these ritual funerary ceremonies." (18)

* * * * *

"American society has institutionalized a broadly stable, though flexible and changing, orientation to death that is fundamentally not a 'denial' but a mode of acceptance appropriate to our primary cultural patterns of activism." (19)

Our American culture finds most people desiring to engage a functionary to do for them what they can't or don't want to do for themselves following a death. Some examples are

care for the body, use of facilities for post death gatherings, making the necessary arrangements for the disposition of the body and securing the necessary documents to permit disposition of the body and to document the death for insurance claims, death benefits, estate matters and for other purposes.

On the other hand, we have found some persons who want little or no post death activities beyond the disposition of the body and securing the necessary documents to establish proof of death. And, they feel others would be of the same mind if they had all the facts. However, often when the few who choose this course of action find themselves in it, they wish they weren't and decide to let a funeral director finish what is undone.

Conclusion

Funeral service is not a perfect institution. But there are no perfect institutions. Those in the profession who might do what is unfair or deceptive can be made to answer to states and sometimes cities which license them. But more important is that they must be responsible to those who call them for their services, facilities and merchandise offerings.

Funeral firms have been serving their communities an average of over fifty years.

Such continued support is based on doing well what no one else does and what few choose to do. Don't take our word for it. What about the last time one or more members of your committee were served by a funeral director? And how many of your constituents find cause to complain to you about the practices of a funeral director? Bear in mind that about 5,000 deaths occur every day before or following which a funeral director is engaged. Most times two to five people are involved in making arrangements as survivors. There is an average of 5,000 "transactions" (an FTC term) a day, including a minimum of 10,000 people per day doing the arranging as survivors. Add to this number those who will pay their respects during the period of the funeral. This totals an estimated 50,000,000 different Americans each year who have some exposure to post death activities which include a funeral director.

In the main these consumers are satisfied and pleased. The hostility some feel toward the funeral director as a symbol of death is diminished as the funeral director becomes a friend while he/she cares for the dead and serves those who survive in a way which maintains the dignity of humankind.

Because this is true, the record in the FTC funeral rule does not show a need for such a trade regulation rule.

REFERENCES

1. Funeral Industry Practices, Final Staff Report to the Federal Trade Commission and Proposed Trade Regulation Rule (16CFR453) June, 1978, page 70
2. Funeral Industry Practices - Proposed Trade Regulation Rule and Staff Memorandum, August, 1978, page 150
3. Ibid pages 45-46
4. Ibid Footnote 150 on page 118
5. Ibid page 63
6. Transcript of Federal rule hearings, page 14,451
7. Ibid page 9889
8. Ibid page 5894-95
9. Ibid page 5895
10. Ibid pages 5899, 5900
11. Ibid page 13,998
12. Regulations of Various Federal Regulatory Agencies and Their Effect on Small Business (part 3) A Report on Hearing Before the Subcommittee on Activities of Regulatory Agencies of the Committee on Small Business House of Representatives, Ninety-fourth Congress, Second Session (page 87-88)
13. Cassen, Ned, "Treating the Person Confronting Death" in THE HARVARD GUIDE TO MODERN PSYCHIATRY, Armand M. Micheli, Jr., Harvard University Press, Cambridge, 1978 (page 599)
14. Fulton, Robert, TX pages 6941-7018 (Testimony highlighted statement which is on the record in entirety)
15. Feifel, Herman, NEW MEANINGS OF DEATH, McGraw-Hill, New York (page xiii)
16. Cassen, op cit. (page 596)
17. Mandelbaum, David, "Social Uses of Funeral Rites," THE MEANING OF DEATH, Feifel, Herman, McGraw-Hill, New York, 1959 (page 189)
18. Handlin, David, DEATH AS A FACT OF LIFE, W. W. Norton & Co., New York, 1976 (page 165)
19. Parsons and Lida, "Death in American Society" in ESSAYS IN SELF DESTRUCTION, Science House, New York (page 134)

Mr. GORE. Thank you very much for your testimony.

Mr. Keith, you say in your statement that "... funeral directors and their associations are not opposed to complete price disclosure or full consumer information on funerals. In fact, we support this type of regulation at the State level. What we object to is the costly, unnecessary duplication of regulation at the Federal level."

Do you support a requirement that price information be given out over the telephone?

Mr. KEITH. As a practicing funeral director, that has been part of our practice for 20 years.

Mr. GORE. Would you support such a requirement?

Mr. KEITH. Yes, or in a State regulation. In fact, our State association just sponsored legislation within the State of Washington where such a regulation was passed. This is exactly what our desire is.

The guideline proposal should be examined more. We were suggesting that if appropriate guidelines were adopted, those guidelines would be implemented at the State level. This is a better recourse than having a brand-new set of Federal regulations and having us as funeral directors report in effect to two jurisdictions.

Mr. GORE. Do you support a requirement that would prohibit funeral directors who offer cremation from requiring a casket for the cremated remains? Would you support such a requirement?

Mr. KEITH. Yes. In fact, regarding the story that Mr. Hughes spoke about wherein the funeral director apparently did state the law required a casket and left the implication that it must be an expensive container, in no State of which I am aware now is there any law that required a casket for cremation. For that funeral director to have misrepresented that State law exists where in fact it does not, he is in violation right then. In effect, that consumer, the widow Mr. Hughes was discussing, has recourse right now on that type of activity without an FTC rule.

The second thing interesting about that story was where he said there is an absence of competition exists; yet it is interesting to note that she decided she would go elsewhere and found a competitor who would provide the services for less cost. The absence of competition simply is not true in the funeral service field.

Mr. TRIMBLE. If I may interject, she had that right to do that before he died—to find out that information ahead of time. She could have availed herself of that and gotten that information by comparing those firms.

Mr. GORE. Before her husband died.

Mr. TRIMBLE. She found the information quite readily after he died. She could have availed herself of that before he died.

Mr. GORE. Mr. Keith, did your organization present a paper entitled, "The Effect of FTC Action on Funeral Prices and Consequently on the U.S. Economy," prepared by a Dr. Vanderlin R. Pine?

Mr. KEITH. Yes.

Mr. GORE. You are familiar with that?

Mr. KEITH. Yes.

Mr. GORE. Your organization paid for that study; is that correct?

Mr. KEITH. That is correct.

Mr. GORE. What is Dr. Pine's historical relationship with the NFDA?

Mr. KEITH. Dr. Pine was a practicing funeral director and then received his Ph. D. in sociology in 1969. Now he is a professor in sociology. He has been a consultant on management statistics for NFDA for about 10 years.

Mr. GORE. It is fair to say he has been your principal consultant?

Mr. KEITH. Although we have been compiling statistics since 1959 on the average cost of funerals selected by families throughout the United States, he has been principally involved with that study for the last 10 years. In fact, the Veterans' Administration had utilized his documents as evidence of what a funeral costs and what the consumers are paying. His statistics have been recognized by the Federal Government.

Mr. GORE. I want to ask a serious question on those statistics because they are repeated quite often. We heard them recently quite often. We have heard them several times during this proceeding.

Does the NFDA ever survey its members for cost or price information?

Mr. KEITH. Yes. Those are the statistics that I mentioned Dr. Pine gathers. He gathers them annually. There are about 1,000 funeral directors that respond. It is a statistically valid survey. It covers about 10 percent of the funerals that are conducted in the United States.

Mr. GORE. None of the results of those surveys are included in Dr. Pine's study. I wonder why not.

Mr. KEITH. The study to which you are referring was his analysis of the effect of the rule in terms of its cost to the funeral director. His studies and his statistics on funeral costs are part of the record in the FTC matter.

Mr. GORE. The study that arrived at this \$50 million figure is based completely on hypothetical assumptions. The question I am asking is this: Why did he use or why would you use hypothetical assumptions in such a study instead of hard data resulting from the surveys?

Mr. KEITH. All we could do was to estimate the impact of the rule. By the way, as I recall, Magnuson-Moss requires that the Federal Trade Commission come up with an impact study on the cost of the regulation to the business. They never did that. The only thing we could do was to come up with our own figures, based on conjecture or hypothetical situations of what it would cost the funeral director if the original rule that was proposed in 1975 were adopted.

Mr. GORE. As you may be aware, the requirement to which you refer is only triggered by the promulgation of the final rule. They are not in a state of noncompliance.

This paper of Dr. Pine was submitted to the Council on Wage and Price Stability. Is that right?

Mr. KEITH. I am not sure.

Mr. GORE. It is sometimes advertised as having been presented to the Council on Wage and Price Stability. You are not familiar with the reaction of the Council upon receipt?

Mr. KEITH. No; I am not. I can provide that for you if you would like.

Mr. GORE. OK. We would be willing to get additional information from you on that point.

It is my understanding that the Council on Wage and Price Stability concluded that the FTC was on the right track.

Let me ask about the substance of the paper. Dr. Pine begins with the statement:

There are valid theoretical explanations of why the implementation of the FTC trade regulations would adversely affect the economy of funeral service.

What I am asking in this question is what is meant by "valid theoretical explanations." They are cited but they are nowhere in the study.

Mr. KEITH. In his research when he reports on the statistics of the cost of funerals, for example, you will find that the cost to the consumer for the funeral—and you will hear later in testimony from Mr. Murchison—seems to be higher where that price is itemized or broken down. He conjectures then in the supposition that if the Federal Trade Commission rule goes into effect, there would be an increase in the cost of the funeral.

Mr. GORE [speaking to a member of the audience who is consulting with the witnesses]. Excuse me. If you are going to be helping with the testimony, we can identify you for the record.

If you think it is going to increase the cost, then why do you support it at the State level?

Mr. KEITH. Frankly, I do not support a mandated regulation on itemization as proposed by the Federal Trade Commission on the State level.

Mr. GORE. I thought you testified earlier that you did.

Mr. KEITH. No. Congressman, I think it is important that we clarify this, so that you do not have the impression that I said there were 43 States with itemization. There are 43 States that have price disclosure requirements which require the funeral director to give the full price of the services and merchandise selected to the family after the selection has been made. Some of those States also offer and require that the funeral director have a procedure for what we call "declination."

If the family selects a funeral, even if it is a single-unit quotation method, and they do not wish to use the chapel or the cars that were included in the quoted price, then the funeral director would be required in those States to reduce the amount by those services or facilities not used.

Mr. GORE. Let's go back to square 1 then. You do not support any regulation, even at the State level, that would require price itemization to a prospective customer before the purchase is made? You do not support that?

Mr. KEITH. Not as it is proposed currently by the Federal Trade Commission; no.

Mr. GORE. Would you support it in any form at the State level?

Mr. KEITH. Yes. Again—

Mr. GORE. You would support a requirement that price itemization be given prior to the purchase?

Mr. KEITH. I would support legislation—in fact, in our own State of Washington we just passed a bill which requires the funeral

director to provide to the family after the transaction has taken place—

Mr. GORE. I am talking about before the transaction. Would you support price itemization before the purchase?

Mr. KEITH. Yes; If I were required to provide price information prior to the purchase, I would have no difficulty.

Mr. GORE. On an itemized basis?

Mr. KEITH. Yes, some form of breakdown of the charges.

Mr. GORE. Prior to the purchase?

Mr. KEITH. Prior to the purchase.

Mr. GORE. You would support a State regulation to that effect?

Mr. KEITH. Yes.

Mr. GORE. In spite of the fact that your valid theoretical explanations indicate that it would increase the cost of the funeral business.

Mr. KEITH. That is correct; yes.

Mr. GORE. Addressing first Dr. Pine's hypothetical, he notes that section 453.2 of the Proposed Regulations require that the funeral home must obtain written or oral permission of a family member or other person authorized by law to, one, embalm the corpse; two, to obtain custody of the corpse provided that the embalming or the pickup was not required to satisfy State or local laws.

Mr. Pine argues that all funeral directors will have to obtain written permission for their own protection, and then he provides on pages 2 and 3 an analysis of the potential cost of getting that permission as follows. I would like to quote from his study:

Let us assume that both permissions can be obtained simultaneously, thereby fulfilling the two requirements in one visit. Estimating the average time for such activities is imperfect at best, but let us assume that it requires an average of 30 minutes for travel time, explanation, and execution of the needed documents. Let us also assume that it requires a couple gallons of gasoline and that an additional authorization form is in triplicate. This will be necessary to comply with section 453.7, retention of documents.

Let us also say that the person dispatched to obtain the signature is paid \$7.50 per hour. Given the cost of gasoline and paper goods, therefore, this added requirement would cost between \$4 and \$6 per death, using the figure of \$5 times the approximately 2 million deaths per year results in an added expense of \$10 million annually.

Do you really believe that all funeral directors will assume this cost? Are you aware of any funeral homes that protect themselves in this manner as a matter of routine today?

Mr. KEITH. Some do, yes.

Mr. GORE. Do you think it is fair to assume that all will?

Mr. KEITH. I think it would be fair. I cannot comment completely on Dr. Pine's work that you have in front of you. I think he was asked to be a witness. Apparently this is a teaching day for him, so he is not able to be here.

I really cannot respond for what he says or does not say. I would like to suggest that we ask Dr. Pine to explain in writing as a part of this record any questions that you would have on that document from which you are reading.

Mr. GORE. We asked Dr. Pine to testify today. We will communicate with him.

I wanted to spend a little time on this because these figures have a way of permanently affixing themselves as truth. We heard a moment ago about the average cost of Government regulations

being \$2,000 per person or per family. In a previous hearing we had the author of the study upon which that figure is based, Dr. Murray Weidenthomb. We found that it included such things as the Drug Enforcement agent and the Copyright tribunal and the Patent Office and a number of items that were questionable, to say the least, insofar as the conclusions were involved.

Let me ask a couple other questions on this.

He provides a rationale for the cost of providing price information over the telephone, which is in the rule as it now stands. On page 7 of his analysis he stated:

Providing price information by telephone exemplifies the predicament of funeral service; namely, the vast majority are small family businesses and the telephone often is answered by family members who may or may not be familiar with price information. This regulation would require that the funeral director have special staff members available 24 hours a day, 365 days a year, to provide accurate price information by telephone, or he would have to install a special answering service to provide interested customers with specific current price information.

Since funeral directors are called upon any time during the day or night, the commitment to having available up-to-the-minute price information would be an extensive and ongoing one. If the provision of such telephone coverage was divided evenly over all deaths, it might cost \$3 per funeral, totalling \$6 million annually.

Do you think it costs \$3 to read a price list over the telephone?

Mr. KEITH. I believe that Dr. Pine—and again I would like him to respond directly to you in writing on that—suggested that the way the rule was written it may necessitate additional personnel being there who are not secretaries or persons on night duty.

Mr. GORE. Why is that?

Mr. KEITH. The rule as stated now is very unclear whether or not we would be abiding by the rule if someone called and said, "How much is a funeral?" A student who is on duty for the evening, says, "I don't have that information. I will have the funeral director call you."

The FTC staff has not made it clear to us whether or not by saying we will get the information to the consumer later is in compliance with that rule.

Mr. GORE. The language of the rule has been redrafted to clarify that the rule is complied with by providing information from the general price list. If you have a price list by the telephone and whoever answers the phone on request reads that price list, is that going to cost \$3? It may take an additional 30 seconds. The conversation is going to take place anyway. When the phone rings, he is going to pick up the phone. If the person asks for a price list, if he then reads from the list, is that going to cost \$10 million a year?

Mr. KEITH. No, but what happens, Congressman, when someone calls and it is not that simple? They call and the student answers. He is operating the phone at 8 o'clock at night. The family is at a hospital. They are anticipating the death right away. They have some questions. That student begins to answer from that list. Then the family says, "Now we are not sure, we may wish to take father back 100 miles to the hometown. How much will that cost?"

I do not think we can have enough trained personnel with all of the answers to those questions without saying to that family, "We will return the call right away. We do have funeral directions available now on call at home. Then we would have someone there to answer."

Mr. TRIMBLE. Mr. Gore, may I expand on that?

Mr. GORE. You have to have people answering the phone right now who either answer or evade questions, don't you?

Mr. KEITH. The phone is answered but in some instances, as Dr. Pine indicates, that could be by an answering service, too.

I cannot find that we can provide enough information to an answering service to give the response over the telephone, at least the way the rule is worded now.

Again I want to reemphasize, Congressman—

Mr. GORE. All the rule says is that the list would have to read if it is requested.

Mr. KEITH. Do you understand my point that that person would not stop at the list. They may have other questions they wish to ask.

Mr. GORE. But the rule would be satisfied if the list were read. Then if the questions went beyond that, you are right back in the same circumstances as you are without the rule. Is that correct?

Mr. KEITH. Yes.

Mr. GORE. Well, then, how does it cost \$10 million to read the list if the person on the phone asks you to read the list? I do not understand how that costs \$10 million.

Mr. KEITH. The only thing I can do is to ask Dr. Pine to submit some information to you. We will have to clarify that.

Mr. GORE. That is one of the valid, theoretical explanations that was used to arrive at this \$50 million figure. I think it is complete hogwash myself. That is just my own personal opinion. I hope you can see why.

If \$10 million of it is taken up by reading a price list over the telephone, it does not seem to hold water.

Mr. TRIMBLE. I have a personal concern with the issue of price information over the telephone. None of us deny that the public has a right to price information, but they have the right to get that information before the death occurs.

Mr. GORE. They do not have right to get it. Do you think they ought to have a right to get it?

Mr. TRIMBLE. They ought to have the right to have the information before death has occurred. As we talked earlier about the lady who lost her husband in Arkansas, she was able to get that information. The funeral industry should not be penalized because people elect not to obtain that information before death.

If we can assume that the value of giving price information over the telephone, as the rule will require, is to protect the consumer, to give the consumer information, I would submit there are many instances when that could be absolutely misleading over the telephone unless the answer is so vague as to include a range of prices that for an average-type service our prices would be.

As Mr. Keith pointed out, when they ask a specific question, it gets almost to a situation of a funeral arranger answering that question. Unless a trained person is available to answer those phones immediately without calling back, then that information would have to be so vague that the consumer would not get accurate information.

Mr. GORE. It would be more than they get now, wouldn't it?

Mr. TRIMBLE. I disagree with that statement. You are assuming that no funeral director gives any information over the telephone.

Mr. GORE. No, I am not.

Mr. TRIMBLE. The consumer has the right to call now and ask for price information.

Mr. GORE. He does not have a right to receive it, however.

Mr. TRIMBLE. That is absolutely right.

Mr. GORE. Do you think he ought to have a right to receive it? Let me ask the question. Do you think that he ought to have the right to receive that information?

Mr. TRIMBLE. He has the right to ask for it.

Mr. GORE. Do you think he ought to have a right to receive it?

Mr. TRIMBLE. He has the right to select the firm that serves him or not to select the funeral home that he calls for that information.

Mr. GORE. So you do not think that he ought to have the right to receive it. Is that correct? Yes or no, if you can answer it yes or no. Do you think he ought to have the right, yes or no?

Mr. TRIMBLE. I cannot answer that yes or no. I think for the general thing you are saying reading a price list over the telephone—my comment is, that is not giving information to the consumer that is absolutely not misleading.

Mr. GORE. Well, it is more information than they get today.

Mr. TRIMBLE. I would also—

Mr. GORE. Please let me pose the question. I find it interesting that you are unable to answer what appears to me to be a relatively simple question. That is, should a consumer in a state of bereavement calling up on the telephone and asking price information have a right to be told general price information on an itemized basis? Should that consumer have such a right?

Mr. TRIMBLE. Mr. Gore, I repeat, my concern about telephone price information is the misleading aspect of it. To call and ask a funeral director, "How much does a funeral cost?" would be like my calling a car dealer and asking, "How much does a car cost?" Unless I know that dealer, unless I know the vehicle he is quoting on, unless I know the services he is capable of providing, and unless I know the staff that he has, that figure could be very accurate or it could be very misleading. That is our concern over price information.

Without a complete explanation of the services a firm is capable of providing and is willing to provide, combined with the need that individual might have at the time of death when they utilize those services, a dollar figure is meaningless unless it is in context with specific services and specific merchandise.

Mr. GORE. Is it meaningless after the death has occurred and the bereaved family arrives at the funeral home? It becomes meaningful then, doesn't it?

Mr. TRIMBLE. Certainly.

Mr. GORE. You can get more specific then, can't you?

Mr. TRIMBLE. You just raised a good point. Funeral directors can be very specific to people who come in their funeral home and look at their facilities and ask to see the caskets, whether it is before death or after death. That can become very specific. That is different. That is entirely different than the question you raised about whether that information should be given over the telephone.

Mr. GORE. You cannot give a range over the telephone?

Mr. TRIMBLE. I said unless we are vague enough to give a range. If we become that vague, such as saying a typical service costs this, then that is not providing consumer information to compare firm A to firm B.

Mr. GORE. Again, it is providing more information than is currently provided by a long shot. Wouldn't you agree to that?

Mr. TRIMBLE. Much of the testimony that has been handled at the FTC deals with selling caskets. Funeral service involves much more than that. There is a whole range of facilities, a whole range of services, a whole range of equipment, and a whole range of merchandise. That cannot be answered by a simple yes-no, dollar sign, or dollar value. That is my concern over telephone prices.

Mr. GORE. It is usually sold as a package, is it not?

Mr. TRIMBLE. It often is sold as a package and it is often sold separately. I do not think we can say "usually sold as a unit."

Mr. GORE. I will have further questions, but I have taken a lot of time. I will call on my colleague, Mr. Lent.

Mr. LENT. Thank you, Mr. Chairman.

Mr. Keith, in the case of consumer complaints against the funeral service industry, are the State regulatory and licensing boards the only avenue of redress?

Mr. KEITH. If we are going to talk about a typical State, I think you would see three avenues of recourse available to a consumer now.

One would be through their State licensing board, the licensing board that regulates funeral directors.

The second would be through an attorney general's office. Most of them have a consumer affairs division.

The third area where a complaint can be filed with some recourse is through a funeral directors' association.

A consumer could go to any three of those areas right now in my opinion in every State in the Union.

Mr. LENT. Isn't it also true that many States have mini-FTC statutes patterned after the FTC act whose administration and enforcement are carried out by the State attorneys general and consumer protection advocates?

Mr. KEITH. Yes, sir. That is correct.

Mr. LENT. In your opinion, aren't the acts and practices that we have heard recently before this subcommittee questionable acts and practices, redressable under these existing State statutes?

Mr. KEITH. That is my opinion.

Mr. LENT. Is it your fear that the FTC's regulation would merely add another layer of regulation to that currently existing.

Mr. KEITH. Another layer and a costly layer at that.

Mr. GORE. Would my colleague yield?

Mr. LENT. I would be happy to yield.

Mr. GORE. The response was in the affirmative to the question, "Are current State laws capable of providing the protection proposed by the FTC rule." Your response was—

Mr. KEITH. No, sir, that was not the question. The question was—

Mr. LENT. Let me repeat the question.

Wouldn't the FTC's regulation add but another layer of regulation to that currently existing?

Mr. GORE. No, it was the question before that one.

Mr. KEITH. I think he is asking about the question before that.

Mr. GORE. The question before that was about the effect of current State laws. Maybe I heard it wrong. I apologize for interrupting.

Mr. LENT. The question before was this: We have heard so-called horror stories, including the one told by one of the previous witnesses, the widow. In your opinion aren't those sort of practices in question redressable under existing State statute?

Mr. KEITH. The question really was this: If there is a consumer complaint where a person perceives they have been fraudulently dealt with or misleading information has been given to them by the funeral director, is there recourse now for a consumer? I suggest that, yes, there is. There are three levels of recourse now for the consumer—through the State licensing or regulatory agency, through the attorney general's office or the consumer protection division or the mini-FTC act, and through a funeral directors' association.

Mr. LENT. In conclusion, I hope you gentlemen are able to maintain your opposition to this sort of legislation. On the board there it looks innocuous enough, but that is the camel's nose under the tent. Once the FTC gets its hooks into you, you have only seen the beginning of the rules and regulations that will be promulgated.

I am concerned that your industry, like many others, is going to be one which will be the subject to tremendous rules and regulations as time goes by, to the point where small funeral homes are going to be severely impaired and driven out of business, leaving the field to the large multifuneral parlor organizations. Then we will have less competition and prices will go up.

I commend you for an excellent presentation here today. I realize you probably have made this presentation many times over the years that this sort of legislation has been considered. I want to commend you for your testimony.

I have no further questions.

Mr. GORE. Thank you.

You place a lot of reliance on State law and State regulatory procedures. I wonder if you know off the top of your head how many of the State funeral boards have a majority of their members as funeral directors. Do either of you gentlemen have that?

Mr. KEITH. Yes. I will submit that.

Mr. GORE. Without objection, the record will be held to receive that.

[Mr. Keith submitted the following response:]

Twenty-two funeral service licensing boards have public members.

Mr. KEITH. We do have an analysis of all the State licensing laws, in addition to what the composition of those boards is. However, since 1957, long before this issue of peer review was a popular issue, we have supported lay persons on the board.

Mr. GORE. In a majority role?

Mr. KEITH. Not in a majority role but in a representative role.

Mr. GORE. Why not? Do you think it is a good regulatory practice to have a majority of the regulatory board made up of funeral directors? Do you think that is a good practice?

Mr. KEITH. Yes, I believe in peer review and peer control of any professional group. I think somehow the concept has gotten a bad name now—somehow you only protect your own interests.

I am not convinced that per se peer review in essence is bad or if you have a board dominated by lay people that the funeral service or any profession would be better regulated.

Many of our State boards right now are going through sunset review where they are being examined and looked at to see if they actually are performing their functions. Most of them are coming up pretty well.

Mr. GORE. I am sure there is disagreement over that. I think this does serve to put into focus your earlier statements that you far prefer a State regulation. You prefer State regulation and at the same time you prefer that a majority of the regulatory agency in the State be of funeral directors. Therefore, what you are really saying is that you prefer no regulation unless funeral directors are doing it. Isn't that what it comes down to?

Mr. KEITH. I think you have twisted my words a little bit.

Mr. GORE. Maybe I have elaborated on them a little bit.

Mr. KEITH. Yes, I think you have.

Mr. TRIMBLE. Mr. Gore, may I tell you about a survey done by the State government within Illinois?

Mr. GORE. Surely.

Mr. TRIMBLE. They covered four different governmental units—the consumer advocate office when that was in existence, the attorney general's office, the department of registration and education, and the Better Business Bureau. Over a 2-year period they came up with 65 complaints against funeral service within the State of Illinois, during a time when over 300,000 funerals were conducted. Of those 65 complaints, three complaints were serious enough to be referred to the State funeral service examining board, which is comprised of funeral directors in Illinois.

Mr. GORE. One hundred percent, all of them, are funeral directors. Is that right?

Mr. TRIMBLE. Yes.

Mr. GORE. Do you think that is a good situation?

Mr. TRIMBLE. Of the five that were referred to the funeral service examining board, all three resulted in revocation or suspension of license. I think the system does work.

Mr. GORE. There is a nationwide conference of funeral service examining boards, is there not?

Mr. KEITH. That is correct.

Mr. GORE. Who is the general counsel for that nationwide conference of funeral service examining boards?

Mr. KEITH. At the present time it is Thomas Clark.

Mr. GORE. Who is the general counsel to your trade association, the National Funeral Directors Association?

Mr. KEITH. The same Thomas Clark.

Mr. GORE. The same Thomas Clark? OK.

I did not get an answer earlier on the number of States where a majority of the regulatory agency is made up of funeral directors.

Mr. KEITH. I said that I would submit that in writing.

Mr. GORE. Let me make the question easier. Do you know of any States where a majority are not funeral directors?

Mr. KEITH. I know of two States off the top of my head.

Mr. GORE. Two States? OK. Again, I think this puts into focus your understandable desire to have the regulation performed by the States because it is done by the funeral directors.

Mr. TRIMBLE. But, Mr. Gore, if there is State regulation by State law, that examining board is empowered and has the responsibility to see that law is carried out. Certainly funeral directors do not make the law.

Mr. LENT. May I make an observation?

Mr. GORE. Yes, I would be glad to yield.

Mr. LENT. Isn't it a fact, Mr. Keith, that bar associations, dental associations, and in effect all major professional review organizations are composed of members of the same or similar profession?

Mr. KEITH. Yes.

Mr. LENT. This is a peer review.

Mr. KEITH. As I said, Congressman Lent, I hear a lot of criticism of that today. I am not sure that it is not just a popular whipping boy.

Mr. GORE. Let's put it in perspective now. Let's wait just a minute here.

There is quite a difference between a bar association and a regulatory board established under State law to hear consumer complaints, is there not? There is a difference between a bar association and a funeral regulatory board.

I would ask for order in the hearing room, please. We do not take comments volunteered from the audience.

Yes, Mr. Trimble?

Mr. TRIMBLE. The question is, Is there a difference? I do not have the expertise to answer your question. However, I would submit there is not much difference between a medical review board, a nursing board, a dental board, and those types of licensing boards which are in existence in the State of Illinois, just like our funeral service examining board.

Mr. GORE. We had several hearings on this subcommittee with regard to Blue Cross/Blue Shield, for example. That organization subsequently agreed with the majority of the subcommittee that it was not a healthy practice for a majority of the Blue Cross/Blue Shield boards to be made up of doctors and hospital administrators.

Yet you are telling us that in your opinion it is healthy for the regulatory agencies charged with looking over the funeral industry to be made up of the funeral directors.

Mr. KEITH. I submit further—and I cannot speak for the other professional groups—we have talked a lot here today about complaints or no complaints, but in every significant study that has been made on consumer satisfaction with the funeral transaction it is higher than any other professional group. Even the FTC studies found that. That was in their concluding statement. They do find a high level of consumer satisfaction.

In fact, one study that they commissioned—that by Dr. Richard Kalish—to survey clergymen, they found exactly the opposite of what they had hoped to find. They found there was, indeed, a high degree of consumer satisfaction with the transaction. The FTC staff chose not to use that study in their final report.

Again, Congressman Gore, if we can return to peer review, I want it clear that our official position as a national association is to encourage a lay person on that board. Again, remember that State laws are not only passed by that regulatory body, but they in effect are a creature of the State legislature. The State legislature sees a practice or something that they perceive not to be proper. Maybe it is some of these FTC rules. They can impose those rules in regulating the profession. Therefore, to isolate us as only being regulated by our peers is simply not true. We are in effect regulated by the State legislature.

Mr. GORE. You do not think it is good to have 100 percent funeral directors on that board? You think there ought to be at least one lay person?

Mr. KEITH. I think there should be a lay person or a consumer representative on the State licensing board.

Mr. GORE. Why?

Mr. KEITH. There is some important input that can be given to that board on how the consumer perceives a transaction which we may not see as practitioners.

Mr. GORE. So long as the majority of the votes are not cast from that perspective. So long as the majority are still funeral directors.

Mr. KEITH. I happen to believe in peer review.

Mr. GORE. I recognize counsel for questions, Mr. Kinzler.

Mr. KINZLER. Mr. Trimble, in your statement you cite Mike Pertschuk's comment with respect to the question of a vendetta. The language accurately, quoting from your statement, "There was a sense of a vendetta against the funeral industry in those early days."

Later on in the same page you refer again to a statement made by Chairman Pertschuk on "60 Minutes" that "in the last analysis the Commission's performance must be judged on the basis of the soundness and quality of the funeral rule * * *." Then you interpret that yourself to mean that the end should justify the means.

From the time of those early days until the point in the process we are in now the following things happened: There were 45,000 pages of material in the record. There were numerous days of oral hearings. Representatives of the various funeral directors associations of many States and I think over 100 individual funeral directors testified.

In each of those hearings there were entitled to and did receive the right to cross-examination. There were then reports filed—the presiding officer report and the staff report. The lack of due process consists of what is probably the most comprehensive rulemaking procedure required by any Federal law.

How would you have felt if the Federal Trade Commission, instead of following that procedure to this end, were to have simply exchanged off the record maybe 12 or 15 letters with various people and then proceeded to have 1 hour's discussion amongst themselves with nobody else represented, and chose to promulgate the specific rule about which you are talking? Would that be a violation of your concept of due process and fairness?

Mr. TRIMBLE. Mr. Kinzler, as you know, we have submitted concerns over the procedures in the past. I am not prepared to docu-

ment all that at this time. We will be happy to submit that in writing to be added to the record.

Mr. KINZLER. I am not asking for that.

Mr. TRIMBLE. We have had concerns over the entire procedure, starting with the very beginning of those procedures. My understanding is that this committee is looking into the procedural aspects of it.

Mr. KINZLER. Mr. Trimble, please be kind enough—I asked what I thought was a very specific question. Let me repeat it.

If the FTC, instead of following those procedures which you felt were defective—and you have documented some of them in here and your statements elsewhere, and I am not questioning that now—if instead of following those procedures, however defective you may view them, and of course if those procedures are defective with judicial review the whole rule would go out as a matter of law.

I asked you this question: If instead of following that procedure the FTC had simply promulgated the rule on the basis of approximately an exchange of 12 letters and 1 hour of discussion, would you call that a violation of due process?

Mr. TRIMBLE. Yes, and I thought I was answering that by saying if we have concerns over the procedures that have been followed, then we certainly would object and have concerns with that.

Mr. KINZLER. That, of course, is exactly what the House of Representatives did in overturning this rule. There were no hearings. There was no cross-examination. There was nothing else.

Therefore, I would assume from that that you opposed probably as an organization the effort by Mr. Russo to overturn this rule. Is that correct?

Mr. TRIMBLE. When you say there were no hearings on the Russo amendment, I would like the record to show about the House Small Business Subcommittee chaired by Mr. Hungate and later by Mr. Russo—

Mr. KINZLER. Mr. Trimble, let me clarify that. Let me be more accurate.

Mr. TRIMBLE [continuing]. With the voluminous testimony given—

Mr. KINZLER. There were no hearings in the legislative committee that has the jurisdiction over the issue. That is the Interstate and Foreign Commerce Committee.

If you are concerned about the end justifying the means, I assume that you would not agree that that is the proper process in the House.

Mr. TRIMBLE. I am not a Member of the House of Representatives. I am not about to stand here and answer for their actions and why they chose to act the way they chose to act.

Mr. KINZLER. Did your organization support or oppose that effort?

Mr. TRIMBLE. We supported the effort.

Mr. KINZLER. Did your organization at any time ask the relevant subcommittee, the Consumer Protection and Finance Subcommittee, to conduct hearings into this issue?

Mr. TRIMBLE. Again, we were under the impression that those hearings had been completed many times in the past and in the record of the House Small Business Subcommittee, and that there

were volumes of records to which the Members of the House of Representatives could refer.

Mr. KINZLER. Are you aware that the House Small Business Subcommittee is not a legislative subcommittee?

Mr. TRIMBLE. But their proceedings are matters of record. Certainly testimony is taken and information is available.

Mr. KINZLER. It is not a legislative subcommittee.

That is all the questions I have, Mr. Gore. Thank you.

Mr. GORE. Let me ask one final question about Dr. Pine's analysis, Mr. Keith.

He estimates that it costs \$1 million to comply with the proposed regulation that would prohibit the claim or implication that a casket is required in the event of cremation. How does that cost \$1 million? Do you know?

Mr. KEITH. No. Again, I will submit that if you need clarification on that issue.

Mr. GORE. He says that it would cost \$1 million because it would require additional inventory and/or special shipping in lieu of inventory, costing on an average 50 cents per funeral, or \$1 million.

It just occurred to me that if that was a concern in the industry, you could eliminate all inventory and provide brochures depicting the available caskets.

I cite it again as a means of dissecting this \$50 million figure, which I think is completely fabricated out of thin air. Yet it is repeated over and over and over again as if it is fact and as if it really has some substance to it. It really does not.

Mr. KEITH. It is just about the same way that it was repeated over and over again by the FTC that this rule would save the consumer millions of dollars. They had no justification for that prediction.

Mr. GORE. I think that is fair enough as a reply. However, in fact I think you will find documentation that at least pretends to be documentation instead of what we find in Dr. Pine's study.

Mr. KEITH. Your interest is noted. We will write a clarifying statement and send it to you.

Mr. GORE. OK.

I could go on about this. He also comes up with a cost of \$4 million for the printing of cards disclosing the legal information requirements. That works out to \$400 per funeral home per year, which leads me to wonder why he doesn't go into the printing and filing business if he really thinks that is what the cost of such cards is.

Let me conclude with just a couple more brief questions.

You both are funeral directors, are you not?

Mr. TRIMBLE. Yes.

Mr. GORE. When a bereaved family comes in to purchase a funeral, do you find them really hard bargainers and sticklers for the best purchase for the money that they can find or are they kind of concerned about other things at that time?

Mr. KEITH. I think what we are seeing, Congressman, is this: Prior to 1969, death was a taboo subject. Even though funeral directors were willing to talk about it, no one else really was. Until Kubler Ross wrote her book, "On Death and Dying," nothing was really talked about. Now it is a popular subject. Some of us were

out talking to consumer groups or in schools giving out price information and talking about it prior to that time.

What I am seeing in my own practice is a more informed and aware consumer coming in with prior knowledge and understanding about what the transaction is all about.

Mr. GORE. How many of your recent customers have read Dr. Kubler Ross' book?

Mr. KEITH. I would say quite a few, or at least have read about it or an excerpt. Remember, that is not specifically on funerals. That book was on the feelings of dying.

Mr. GORE. You are saying bereavement is not what it used to be.

Mr. KEITH. I am saying that people are much more aware of it. Magazines run articles. There is a great deal of literature.

Mr. GORE. As a result, now are they pretty hard bargainers when they come in?

Mr. KEITH. I would not call that person a hard bargainer. I think they are aware—consumers who are aware of the value and what they wish to spend at the time of death.

Mr. GORE. Do they really press you for the best dollar value that they can get?

Mr. KEITH. They will ask questions about how they can save on this or that. I do not call that hard bargaining. I just call it an aware consumer.

Mr. GORE. You do not really get hard bargaining, do you?

Mr. KEITH. I think you see an aware consumer.

Mr. GORE. Do you get any hard bargaining at all? You don't, do you?

Mr. KEITH. Oh, sure, I get the phone calls, what you were talking about earlier about price disclosures.

Mr. GORE. That is when the hard bargaining might take place—over the telephone when people might shop around by telephone to see what the prices are. In fact, that could provide the possibility of a competitive environment, couldn't it?

Mr. KEITH. I have seen no increase since we passed such a law in our State last year, which I supported.

Mr. GORE. Mr. Trimble, are they hard bargainers when they come into your display room?

Mr. TRIMBLE. I disagree with the word "bargaining" because it implies we are like the used car dealing and we are hustling a product.

Mr. GORE. Are you not hustling a product?

Mr. TRIMBLE. Not to the point of bargaining.

Mr. GORE. You prefer to sell it without bargaining.

Mr. TRIMBLE. May I tell you how we operate in our funeral home and speak regarding our firm?

Mr. GORE. Well, I am going to give you an opportunity to do that, but I would just like to get a formal response to this question.

Do you find them pretty hard bargainers, your customers?

Mr. TRIMBLE. Not knowing how you are defining "hard bargaining," but if you—

Mr. GORE. Do they try to get the top dollar for their money?

Mr. TRIMBLE. No, we are not finding that, but let me also explain.

A family comes into a funeral home making a funeral selection. They pick out items of service and merchandise, depending upon their needs and their wishes. They have a range of those offerings. We do not bargain in that this casket costs you more than it will cost her in coming in and picking it out because you are a better bargainer. That specific item of merchandise is at a set price. A family does not have to spend that. They can spend more or they can spend less. In our particular firm we have 30 different caskets on our showroom floor at all times with 30 different prices on them.

Mr. GORE. Do you have any available that are not on the showroom floor?

Mr. TRIMBLE. Yes, but none cheaper. None are available cheaper than what we show on our selection room floor.

Mr. GORE. Do you have cheaper models of versions of caskets that are on the showroom floor?

Mr. TRIMBLE. No. The differences we would have would be comparable quality, different colors, and that type of thing. Many funeral homes have a warehouse and storerooms.

On the point of bargaining, it is not a situation that if they are a hard bargainer they get that unit for less money. However, they have the opportunity to spend less if they wish to do so. Some families wish to spend less; some families want to spend more. That is what we are arriving at.

I would also like to correct an impression. Your terminology is absolutely correct "bereaved families." However, it is very easy, particularly in the media, to have the assumption made that because people are upset at the time of death they are at a disadvantage when they come into the funeral home.

I would like to be on record as saying that I cannot remember the last time when I had one individual alone in making funeral arrangements after death had occurred. There are brothers, sisters, husbands, wives, in-laws, clergymen, neighbors, nieces, and nephews. It is a group situation with groups making those arrangements. I just want to correct that impression of the terminology.

Mr. GORE. And they are generally all bereaved.

Mr. TRIMBLE. Not necessarily. I would not say that at all, no. Not every death is a sad death. There are many instances when death is a relief if an individual has been suffering. The family maybe has gone through their grief at the point when an individual became senile or was stricken with a terminal illness, and they have had an opportunity to work through their grief.

Mr. GORE. Earlier you said that the Illinois Board had revoked five licenses. Is that correct?

Mr. TRIMBLE. Yes, out of the study that was done by the State government. There were five that were serious enough to refer to the funeral examining board. All five resulted in license revocation or suspension.

Mr. GORE. I am looking at the Illinois State law here. It does not have any of the requirements from the proposed FTC rule. I am wondering what they did. They must have been pretty bad operators.

Mr. TRIMBLE. I would assume it was serious to have their license revoked. I can supply that information for the record.

Mr. GORE. I wish you would.

Mr. TRIMBLE. We will add that in written testimony to the record.

[The information requested was not available to the subcommittee at the time of printing.]

Mr. TRIMBLE. May I comment to your earlier statement about public members on the board? Five out of five, I do not think public members would have done more than that in those instances.

Mr. GORE. Of course, public members might do what the gentleman who testified at our first day of hearings did when he joined the board in Arizona and saw how pitiful the current laws were and actually made recommendations to get some reasonable consumer protection laws on the books. So long as 100 percent of the board are funeral directors, it is unlikely they are going to do that.

Mr. TRIMBLE. Laws, of course, are public record. One does not have to sit on the board to have access to the laws.

Mr. GORE. That is right, they can go down to the legal library and look it up and get incensed about what the law is.

Mr. TRIMBLE. If they are that bad. In Illinois my personal feeling is the law is not—

Mr. GORE. Do you find, as Mr. Keith does, that there is a new attitude about death?

Mr. TRIMBLE. That is absolutely right.

Mr. GORE. Are they more inclined to bargain with you?

Mr. TRIMBLE. Again, I question your term "bargaining." To the point of getting a lower price for a specific item of service, no. To the point where they have a preconceived idea of what they want and what they need, yes.

I have commented often in the groups I lecture before that I would much rather have a family come in that has done research and has asked the questions ahead of time. Then they say, "We know what to do. This is what we want. This is important to us. This is not as important to us, so we will eliminate that." I would rather have that than have them come in and say, "I don't know what to do. Tell me what to do."

The fact that the public does not choose to avail themselves of the opportunities existing does not counteract it.

Mr. GORE. I want to thank both of you for appearing as witnesses today. I found in the 3 short years I have been on this subcommittee that we always get closer to the truth and always have a better hearing record when we have divergent points of view represented among the witnesses and an really come at these issues from different directions. I appreciate the excellent testimony that you have presented here today. I think your testimony and the dialog we have had has served to improve the subcommittee's understanding of this issue. I would like to thank you both.

Mr. KEITH. Thank you very much for your courtesy.

Mr. GORE. I would like to call now Ms. Rebecca Cohen, president of the Continental Association of Funeral and Memorial Societies, and Ms. Elizabeth Clemmer, executive director of the Continental Association of Funeral and Memorial Societies.

Please stand and be sworn.

Do you swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. CLEMMER. I do.

Ms. COHEN. I do.

Mr. GORE. Thank you very much. I appreciate your patience for waiting. We have a very lengthy witness list today. I am sorry for any inconvenience that our schedule today may have caused you. We appreciate your waiting.

Without objection, the entire text of your prepared statement will be inserted in the record. [See p. 273.] Please proceed with the presentation as you see fit.

TESTIMONY OF REBECCA A. COHEN, PRESIDENT, CONTINENTAL ASSOCIATION OF FUNERAL AND MEMORIAL SOCIETIES, ACCOMPANIED BY ELIZABETH CLEMMER, EXECUTIVE DIRECTOR

Ms. COHEN. Thank you. We appreciate the opportunity to be able to testify here today.

I am the president of the Continental Association of Funeral and Memorial Societies. Ms. Clemmer is the association's executive director.

Rather than read our written statement, we would like to summarize it.

Mr. GORE. Fine.

Ms. COHEN. First, I should explain who we are and why it is that we are familiar with funeral industry practices and the problems they can create for funeral buyers.

The Continental Association of Funeral and Memorial Societies is comprised of nonprofit, democratically organized, volunteer-run, grassroots organizations dedicated to protecting the rights of funeral buyers. At present there are 175 memorial societies within the association. They represent more than 750,000 members.

The first memorial society was organized in 1939 by a church group in Seattle whose families believed in simple funerals but were unable to find funeral directors who were willing to sell them what they wanted. They organized a bargaining cooperative and they were able to locate one funeral home that was willing to enter into an agreement with the church group to provide its members with simple funerals of their own choice at a reasonable cost.

Now this model has been repeated across the country but not everywhere with the same degree of success because there are not always funeral directors who are willing to agree with the memorial society's insistence that simple and economic and dignified services be made available as well as others.

Memorial societies help their members in two ways. First, they encourage preplanning of funerals with the entire family so that when the time comes the funeral or memorial service or whatever is selected is what the deceased wanted and has a special meaning and solace for the family.

Second, memorial societies provide their members and the general public with complete information about local prices, choices, and legal requirements—information that is not always readily available from funeral homes, either to the people who are shopping

around in advance of need or to people who are buying at the time of a death.

In those places where memorial societies have found funeral directors who are willing to cooperate with them, they provide the sure reality of choice. Expensive funerals are readily available everywhere. It is people who want an alternative, generally a simpler alternative, who have found it necessary to organize in order to be able to have the assurance of getting what they want.

Memorial societies have no commercial stake in the promulgation of the Federal Trade Commission rule. In fact, it should reduce the need for people to organize and/or join memorial societies. The financial stake here is with the funeral buyers.

Memorial society volunteers across the country have worked with, talked to, and sometimes even been rebuffed by thousands of funeral directors over the course of 40 years. Also, because of our consumer education activities, and because we are a source of disinterested, objective information about funeral planning, our volunteers encounter hundreds of thousands of consumers, many of whom are just asking for information but many are also relating very sorry stories about unhappy experiences they have had, or about paying more than they would have liked to for a funeral.

Of course, we were not at all surprised by the findings of the FTC staff report. Speaking on behalf of our members and other consumers, we really hope the Congress will recognize the Federal Trade Commission rule is very welcome reform.

Betty Clemmer is in regular touch with the people that this rule would help. She will describe some of the kinds of problems she sees on a regular basis and explain some of the reasons why they exist.

Then I would like to say a few words about why Federal rather than State regulation is needed in this area and also comment a little about the rulemaking procedures that were followed.

Ms. CLEMMER. Thank you for the opportunity to appear.

Before I start I would like to be sure a couple of things are clear for the record.

Memorial societies are accused of many things. One of them is being against funerals or pushing a certain kind of funeral. This is not true. We are in favor of choice. We are in favor of alternatives on funerals.

We are also accused of being anti-funeral-director, or being in competition with funeral directors. This, too, is not the case. Memorial societies work with funeral directors and in fact could not exist without the cooperation of hundreds of funeral directors in various cities around the country. It is clear funeral directors perform an essential role in our society, one that few others wish to be involved with.

But it is also clear that many problems exist with funerals, at least from the point of view of the families arranging them. I wish it were possible for members of this committee to read my mail for a while. We average 400 letters every week. We do not do any advertising. These letters come because people read articles about us in such magazines as *Readers' Digest*, *Good Housekeeping*, et cetera.

While most of these letters are simple requests for information, many of them go on to tell sad or alarming stories about what has happened to them while arranging a funeral. We need to remember that these people doing the arranging are grief-stricken. They are upset. They are under pressure. They are not usually even thinking of a funeral as a business transaction. They are just thinking of it as a ceremony. But it is a business transaction and one of the most expensive of a lifetime.

Now the funeral director has to remember that this is a business arrangement. I do not mean that the funeral director is insensitive to their grief. I mean that funerals are his livelihood, and he has to keep the business aspect in mind.

One of the first things that these people face when they go to make funeral arrangements is package pricing. Now this is not something that just a few funeral directors do. This is not the work of a few bad apples that the industry can regulate by itself. This is done by a majority of all funeral homes.

After Mr. Keith read off statistics about pricing, I had someone in my office check the latest statistics that I could find. I have the statistics for 1976, published in the 1977 issue of *Casket and Sunnyside*. These are the latest statistics we have in our office simply because the funeral industry press has not published this particular statistic since then.

Out of approximately 145,000 funerals reported on, 74,000 used single-unit pricing. That is the package price. Another 19,000 used biunit pricing. That means the casket is purchased separately and then everything else is lumped together. Another 11,000 used triunit pricing. I am not sure myself exactly what triunit pricing is. It is clear that a majority of the 145,000 funerals being reported on use either complete package pricing or separate out the casket and then lump all the other services together.

Mr. GORE. I would like to interject there.

Your testimony is that the majority of funeral homes use—

Ms. CLEMMER. According to Dr. Vanderlin Pine—these were his statistics.

Mr. GORE [continuing]. Use package pricing?

Ms. CLEMMER. That is right.

I would like to read you some examples of what happens to a family when they are faced with unit pricing. This is from Brooklyn, New York.

Dear Sir: My father-in-law died last week and my 80-year-old mother-in-law was left destitute. It cost me \$1,200 for the funeral (no chapel service, no limousine, no shroud). . . . I am married with three children, age 55, and do not have any life insurance for my family. I cannot afford to deplete my meager savings, and do not have adequate burial protection for my family. I am also on permanent social security disability. In the event of my mother-in-law's death (she is 80), my family will be in dire financial need.

What if a family tries to plan ahead? They still meet the same package-pricing problem.

This letter is from Connecticut:

My wife and I went to the undertaker we planned for our funerals but when we asked about the minimum cost of a cremation they said at least \$1500, so we are looking around for somebody else. We do not want to be embalmed or have visiting hours or a funeral.

Interestingly enough, in Connecticut, memorial society members working with cooperating funeral directors can obtain the same simple cremation this family wanted for about \$400, readily.

A Federal Trade Commission rule would insure that people paid only for what they decided they wanted.

Another problem the family faces is that they do not know the laws. They do not know the laws about embalming. They do not know the laws about caskets for cremation and so on.

Right now they cannot necessarily rely on their funeral director to accurately tell them what the laws are.

This letter is from Oklahoma:

Two or three years ago I read in the paper and also an article in a magazine that a law had been passed—the requirement for a casket was no longer necessary for cremation. Please explain what is required. Our local funeral director says he never heard of such a thing and he called someone in Tulsa, Okla., and she says the same thing. He says the casket for cremation is \$400. . . . Here in Oklahoma they say it is State law to be embalmed if the person isn't buried within 24 hours.

I might insert that this is not the actual law in Oklahoma.

They say a cremation funeral cost at the very least \$1,500.

Once again, memorial society members in Oklahoma can obtain the same funeral for under \$400.

A Federal Trade Commission rule would let people know what the law is and would prohibit misstatement.

A new problem for families arranging funerals is the funeral director is using grief counseling techniques to encourage people to spend more money. This book, "The Funeral Director and His Role as a Counselor," is published by the National Funeral Directors Association. It is something else I wish the committee could read. The book has many things in it, but two of them are especially insidious. It tells funeral directors how to convince families to buy the standard package price funeral even if they do not want it. It justifies this both to family and to the funeral director by repeating over and over and over again that this is what the family "needs."

I listened to Mr. Trimble talk about how he preferred families to come in and say this is what they want and they have done their thinking ahead of time. This book describes how a funeral director, if what they want is simple, can convince them that they want something more elaborate.

The fact is that the standard package price funeral is not necessarily what the family needs, but it is what the funeral director prefers because his profits are higher. Funeral directors take courses on how to use these techniques.

Here is a case study. It details how a funeral director, using a technique called grief evaluation, convinced a family who wanted a simple funeral, one costing \$363, to instead spend over \$1,000.

Time is running out and I will not continue to quote passages from this material, but I refer you to my written statement.

The least we can do is help bereaved families who will be making expensive funeral arrangements when under pressure and upset, and who are faced with dealing with the practices I described—the least we can do is to give them the elementary protection offered by the proposed FTC rule.

Ms. Cohen will describe how the State regulations have not provided these protections.

Ms. COHEN. Opponents of the Federal Trade Commission say "leave it to the States." They have said it again here today. However, it is the very failure of regulation at the State level to provide consumer protection that is an invitation to the Federal Government to intervene.

We have gone into some detail on this in the written statement which has appended to it some excerpts from a book entitled "The History of American Funeral Directing." [See p. 285.] One chapter describes the genesis of the trade associations and the State licensing apparatus around the turn of the century.

In the prepared statement we point out that among the motives for organizing into a profession—as explained in this book—were limiting competition from people who sold less than a full service funeral, controlling entry into the trade, elevating the status and the self-esteem of funeral directors, promoting a national policy for shipping bodies, and curtailing advertising.

Some of these objectives and motivations still exist today in licensing boards.

There is an example in the written testimony from the State of New York where efforts to promulgate some consumer reforms through State legislatures failed year after year. The State department of health, which oversees the funeral licensing board, used its authority to enact some consumer protections by defining "misconduct" in the licensing law.

The reaction to this from the New York State Funeral Directors Association is expressed in a dues notice they sent to their membership this last year explaining some of the services the trade association performs for its members.

One is "representing you and fighting for your interests in Albany. This is a two-pronged battle. The first phase includes combating the health department's efforts to increase its regulatory powers over your business practices."

I will skip to the final sentence which is: "The health department is acting increasingly as a consumer advocate rather than as a licensing agency and it must be stopped."

A typical State regulation talks about educational requirements, embalming skills, facilities in a funeral home. Sometimes it may get into the behavior of a funeral director, and I have seen licensing laws which say it is unseemly to use profanity before a dead body or be intoxicated at a funeral.

Generally they tend to homogenize the profession and tend to homogenize what the funeral directors offer the public.

Enforcement of State regulations in the hands of the industry can be selective and capricious. It has been used in a number of States to interfere with companies that are trying to sell alternatives to the standard funeral or with funeral directors who cooperate with memorial societies or with people offering something other than the traditional funeral, even when it is expensive.

In many States, when consumer protection reforms are suggested, the industry fights them. We think there is little justification for looking to the States to initiate the kinds of consumer protections the Federal Trade Commission proposes to give us.

This is not to say under the FTC rules the States would not retain powers, and it is not to say FTC will duplicate anything

existing at the State level. The chart which was provided as an appendix to the Commission's testimony this morning indicates that very little in the rule would be duplicative of States laws since most State laws do not contain provisions that the FTC proposal would mandate.

I would like to close by saying a little about the Federal Commission rulemaking proceeding. The Continental Association was a party of interest representing consumers. We qualified to receive reimbursement funds for some of the contribution we made to the hearing.

It was a fair proceeding. All interests had ample opportunity to express their views at several stages along the way. There was an enormous and comprehensive record accumulated. In the end the Commission indicated that its own decision will modify conflicting recommendations of outside parties and its own staff.

Some people wish the final rule would be stronger. Others wish the final rule would be weaker or nonexistent.

However, what is left in the proposal, we believe, is unchallengeable to anyone who has any familiarity with the record, and it is unchallengeable if we remember that what we are talking about here is people. We are talking about widows and widowers and practices that take advantage of them at a terrible time in their lives.

Thank you. We would be happy to answer questions.

[Testimony resumes on p. 311.]

[The joint prepared statement and attachment of Ms. Cohen and Ms. Clemmer follow:]

TESTIMONY OF

THE CONTINENTAL ASSOCIATION OF FUNERAL AND MEMORIAL SOCIETIES

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

OF THE

UNITED STATES HOUSE OF REPRESENTATIVES

FEBRUARY 21, 1980

3

Thank you for the opportunity to testify today about the Federal Trade Commission's proposed Trade Regulation Rule on Funeral Industry Practices and about the rulemaking proceeding in which the Continental Association was one of the parties of interest designated to represent funeral buyers.

The Continental Association (CAFMS) is a national, non-profit volunteer-run organization devoted exclusively to protecting the rights of funeral buyers. The first memorial society was organized in 1939 by a church group in Seattle whose families believed in simple funerals, but had been unable to find funeral directors willing to sell them what they wanted. They organized a bargaining cooperative and located one funeral home sympathetic to their wishes and willing to risk retaliation from other funeral directors for entering into an agreement with the church group to provide its members simple funerals of their own choice, at a reasonable cost.

Four decades later, there are 175 memorial societies and more being organized across the country for the same reasons that inspired the Seattle group. Funeral industry practices still today interfere with free choice in the making of funeral arrangements.

Memorial Societies help their members in two ways. First, they encourage pre-planning (not pre-purchasing) funerals in consultation with family members so that when the time comes, the funeral or memorial service is what the deceased wanted and has a special meaning and solace for the family. Second, memorial societies provide complete and accurate information about local prices, choices and legal requirements -- information that is not always readily available from funeral homes, either to people who are planning ahead, or to people who are buying in the crisis atmosphere after a death.

Memorial societies help the general public by sharing consumer oriented information about funerals as widely as we can, given the volunteer, non-profit character of the organization. At our national office alone, we receive an average of 20,000 letters each year from schools, churches, citizens organizations, government agencies and individuals asking for objective information about funeral planning and advice about how to obtain simple, economical services.

Many of these letters are sad and alarming -- people are social security afraid because they assume a funeral has to cost more than they can imagine paying; people who are angry with themselves for being talked into services they did not want and found inappropriate to the occasion; people who were sold goods they did not need, or were charged for things they did not use; people who were not made aware of the time they made the arrangements that they had any choice in the matter.

It is difficult to imagine that the people who write to us about their funeral experiences, or who ask for information about funeral planning, would find such that is helpful to the future that surrounds their planning. Information about funeral arrangements, or arrangements over which someone should be aware, or procedures that someone might not be so informed because there are a lot of them and many are small -- such things are not really procedures or the policies found in funeral homes. They are great differences and in the end the result about how and about choices they make they understand as a matter of course, or as "surprising" results for service. They want to know what their choices are, and to be advised in such ways.

For the people who write to us, the subject is not arrangements and

small businesses. The subject is widows and widowers and the sales practices that exploit them.

The letter of invitation to testify today says the Subcommittee wishes to examine the proposed rule, its basis and the rulemaking procedures followed by the FTC.

We shall touch on each of these points, using where possible consumers' and industry spokespersons' own words to illustrate the nature of this transaction and the need for federal action to safeguard the rights of funeral buyers.

The proposed rule calls for commonplace fair business practices: meaningful price disclosure, honesty and competition. There are no onerous requirements or paperwork burdens, and minimal compliance costs.

During the course of the FTC proceeding, we have noticed the proposal to amend down to establish essentials. Some spokespeople for the National Funeral Directors Association reportedly have said of the current version of the rule that it is not nearly as effective as the original rule; that the new draft has deleted most of what was most objectionable to them; that it is quite possible that the FTC will promulgate some rules; and that many of the proposed regulations would offer no serious changes for funeral service. (Some reports in The American Funeral International, July, 1975.)

In revising down the rule, some important consumer protections have been discarded. These include uniform price cards, display of at least one of the lowest priced caskets, prohibitions against padding up funeral directors' commissions from the family or reflecting on relatives' wishes as the family's request.

From the consumer point of view, there is no question but that there needs to be a federal rule. The rule proposed to amend the FTC would still be an advance on its own as far as present consumers.

As an act of, the House has a federal rule in mind. Some, however, proposed and others sought amending regulations with major changes of funeral buyers at a time when they are already vulnerable to manipulation by adults and are in serious need of protection.

Second, funeral licensing at the state level does not protect consumer rights and there is little reason to hope that the same interests that so vigorously oppose consumer protection from the federal level will promote meaningful reforms in the states.

Unfair practices, and their consequences, have been exhaustively documented by the FTC, state investigators and other observers of the funeral industry, including investigative reporters in all parts of the country. One is Jessica Mitford whose best selling exposé, The American Way of Death, was first published in 1963, ten years before the FTC investigation began. This book has remained in print for 17 years and was re-issued in two different paperback editions in 1978 because the contents are still timely.

The Consumers Association regularly receives letters illustrating the effects of unfair practices on bereaved families. A California woman writes:

"...Just having gone through this experience for the first time...with my mother, I was really confused, going to several places, some said no embalming, wouldn't take the small coffin I had as my mother, some would. All told me I needed the coffin box to put the mother in. I found the biggest problem with all was trying to call the highest price coffin."

Such confusion over costs and requirements are commonplace. Another woman writes to us that the funeral director:

"told us the requirements required a coffin and the state says that but some states didn't and they would change the requirements that is what a funeral was like that proved to be a hell...."

A funeral director's aim to sell a coffin for a commission often causes inconvenience of the law. An Oklahoma woman writes:

"We are going to have a funeral for my mother...and we are not sure what the requirements are...the funeral director told us that we needed a coffin and that the state says that but some states didn't and they would change the requirements that is what a funeral was like that proved to be a hell...."

Selling a funeral by a "package" or "unit" price works a clear disadvantage to people who prefer simple funerals. A Connecticut man who wished cremation wrote:

"My wife and I went to the undertaker we planned for our funeral but when we asked about the minimum cost of cremation they said at least \$1500.00.... We do not want to be embalmed or have visiting hours or a funeral."

The same disadvantage exists if a family wishes simple, immediate burial. A New York man writes:

"My father-in-law died last week and my 80 year old mother-in-law was left destitute. It cost me \$1200 for the funeral (no chapel service, no limosine, no flowers).... I am married with three children, age 13, and do not have any life insurance for my family. I cannot afford to deplete my meager savings, and do not have life insurance protection for my family. I am also on permanent social security disability. In the event of my other-in-law's death (she is 80), my family will have dire financial need."

By the same token, people do want a "complete" funeral without all the trappings and without the opportunity to save on the total cost. Our favorite example is an empty limousine traveling the funeral procession because it was paid for anyway.

Working in just one technique used to get people to buy more than they want. Another, more subtle technique is the growing effort to turn funeral directors into self-styled bereavement counselors. Funeral directors and the clergy are now taking four or five day courses called "Life Appreciation" or "Life Centered Funeral Services". Of value learned from these courses are the use of sympathy and sympathy techniques to encourage bereaved families to be pleased about funeral services. One common technique that attendees will learn is to increase funeral services and earn the gratitude of your

A common, unspoken agreement with cooperating funeral directors is that funeral services are to be held at the funeral home and not at the home of the deceased. This is also available for approximately \$1000. A "funeral" level is available to the family for \$1000.

clients at the same time". A funeral director who attended enthusiastically observed: "Should be mandatory, and will have to show up in more satisfied clients and more dollars". Another such course includes in its promotional materials a detailed case history showing how a funeral director, using the technique of "grief evaluation" taught in the course, was able to "counsel" a family that wanted a simple funeral costing \$363.40 into spending \$1114.16 instead.

The rationale for such courses is fully developed in a book by Howard Raether, executive director of the National Funeral Directors Association, and Robert Slater of the University of Minnesota's Department of Mortuary Science. The book, The Funeral Director and His Role as a Counselor, describes in detail the techniques that a funeral director may use to talk bereaved families into purchasing the kind of "complete" funeral that the funeral director thinks is best. These techniques are insidiously couched in terms of "meeting the family's needs".

This NFDA publication begins by warning the funeral director that unless he himself believes fully in this method he will not be convincing to the family and "...they may well choose to exercise their own options rather than accept those of the counselor".

Later on in the book the funeral director is told that a family calling him and requesting a simple service needs immediate counseling:

"Many times the tone of voice of the caller, discussion in the background or the nature of certain requests (no embalming, no funeral service, a private funeral or body donation) are indications of need for immediate and individual counseling. Most times this counseling is best done on a person-to-person basis, not by phone, and immediately, especially prior to the actual arrangement conference."

The problem of helping a family go against the wishes of the deceased if he or she had requested a simple funeral is also discussed:

"In these instances, the funeral counselor must explore three areas. First, he must ask why the decision was made at the time that it was agreed upon and what the circumstances surrounding it were. Secondly, he must help them see that the same decision made at a time and place different than which one might suggest can have the same influence at the present time. Thirdly, he should talk the persons concerned into seeing that the interests involved and the family's actual wishes cannot be contradicted in advance of the actual final disposition."

"As to the matter of guilt in changing previously made plans, the counselor should point out that the previous decisions were made in the belief that they were the best for all concerned. Now when that is not the case, certainly changing decisions so that they will not /sic/ meet the needs of all concerned would also be the desire of the deceased."

The funeral directors' effort to sell the funeral that they have decided best meets all families' "needs" raises a crucial question: Who decides what kind of funeral a family will purchase? The funeral directors, by use of unit pricing, and various counseling methods, have tried to assure that they will make that decision for the family.

The Federal Trade Commission's proposed rule is based on the premise that it is the family's right to make that decision. But, to make that decision the family needs information about the prices of the separate components of the funeral, and information about law and customary requirements. Disclosure of this information is at the heart of the proposed FTC rule.

Without this disclosure there can be little price competition. Without it, most families will never know the wide range of prices and alternatives that may be available. Without it, families cannot make their own, informed decision.

Opponents of the FTC rule plead that federal regulation is unnecessary because funeral directors are already regulated at the state level. To the contrary, the failure of state regulation to protect consumers is a powerful indication to the federal government to come to the rescue.

Authority to regulate funeral director conduct is almost every state enables to a licensing board comprised primarily, if not

exclusively, of funeral directors. These state regulatory boards date to the decades around the turn of the century. Their genesis is described in a book called The History of American Funeral Directing, copyrighted by the National Funeral Directors Association. Excerpts from the book are appended to his testimony. In them is an explanation of the motivation for organizing funeral industry trade associations and then erecting a state licensing apparatus. Several incentives are mentioned, including limiting competition from people who sold less than a full funeral service, controlling entry into the trade, elevating the status and self-esteem of funeral directors, promoting a national policy for shipping bodies and curtailing advertising.

These excerpts are included not just for a history lesson, but because some of the same assumptions and purposes are exhibited by industry dominated licensing boards today. Their focus is to protect the tradesman, and not necessarily his customers. Here are a few illustrations that are indicative of the kind of material amassed in the FTC record.

In New York State, efforts to enact consumer protections through the state legislature were frustrated by opposition industry lobbying. In January, 1976, the State Department of Health used its authority to define "misconduct" by licensed funeral directors to include some specific unfair practices like those described in the FTC staff report. The reaction of the New York State Funeral Directors Association is expressed in a 1979 letter to its members. The first item in a list of the services that the Association provides its members is this:

"Representing and fighting for your interests in Albany. This is a two-pronged battle: the first phase includes combating the Health Department's efforts to increase its regulatory power over your business practices under the guise it holds now from the legislature to license funeral directors... The

second phase includes stopping the Health department's efforts to promote legislation that will legally allow it to further regulate not only your business practices, but to regulate the manufacturers of funeral supplies. The Health Department is acting increasingly as a consumer advocate rather than as a licensing agency, and it must be stopped! (emphasis added)

Licensing and consumer protection, it seems, are considered to mutually inconsistent.

The State of Pennsylvania provides an illustration of the close ties that often link the trade association and the licensing authority. Several Pennsylvania funeral directors appeared at the FTC hearings. One was chairman of the state licensing board and subsequently came to hold that position, the presidency of the state trade association and the job of treasurer of the National Funeral Directors Association, simultaneously. The State Ethics Commission insisted he relieve himself of one of these posts.

At the FTC hearings, he was one of the many funeral directors to make clear his preference for state rather than federal regulation of the funeral industry. In cross examination, he was asked whether, if the FTC adopted a guide rather than a rule and relied on the states to enact reforms, he would go home to Pennsylvania and promote itemized price disclosure. He said no. True to his word, he went home and helped produce a "model" law providing only for the disclosure of the total, or package, price of a funeral, and that only upon request.

He was not the only funeral licensing board representative who was cross examined in this way at the FTC hearings and replied that, no, they would not go home and promote itemized pricing and other protections, even if that meant that the federal government would refrain from action. Nor is Pennsylvania the only state where in recent years the industry has offered to write into the licensing regulations what is already common practice -- package price disclosure.

Pennsylvania and New York are also illustrations of how long it takes to make even modest changes in state regulations. Pennsylvania still operates under a 1935 licensing law. In 1978, two consumer members were authorized to serve along with five funeral directors on the licensing board. More than a year went by before even one name was submitted to the state senate for confirmation. That individual, to our knowledge, was not one of the several people suggested

by consumer organizations in the state. Similarly, in the District of Columbia, a revised and improved licensing law was proposed back in the days when there was an appointed City Council. It has resurfaced several times in different versions, including one on which industry and consumer representatives agreed, at least publicly. No final action has been taken.

Licensing regulations in many states continue to serve the interests of the full service funeral establishment at the expense of people who would like to sell alternatives, and of the consumers who prefer simple services and would rather not pay for the overhead of a fully equipped establishment. Licensing regulations that require training in embalming, insist that all funeral homes have embalming facilities, and sometimes public rooms, all raise the cost of doing business which raises the cost to the customer and limits consumer choice. Still, there are funeral homes willing to sell alternatives to the "complete" or "traditional" funeral. Then, enforcement of the licensing regulations by the industry dominated licensing board can inhibit that kind of competition. Because memorial societies want to offer their members simple, economical services, funeral directors who cooperate with societies are often ostracized or harassed by their fellow businessmen and by the state licensing board. Many times, this has discouraged them from cooperating with us at all. A recent example was reported in the newsletter of the Memorial Society of Maine:

"We HAD a contracting funeral director, briefly. A fine person, newly established, excellent facilities. Agreed to \$450 simple cremation (entire), \$350 simple burial + cemetery charge, transportation \$ 75 or \$1/loaded mile, thru the state. The contracts were drawn, sent to sign. He backed out. Normally homes are inspected every 1-3 years. His had been thoroughly inspected 7 mo. prior. HOWEVER, after our negotiations he was re-inspected. He feared loss of license, jeopardizing his investment, if he associated with us..."

These examples illustrate the need for federal regulation to create conditions conducive to competition and the reasons why reliance on existing regulation at the state level is not a solution to consumer problems.

One more point should be considered in weighing the likelihood that this industry would, without federal insistence, set off on a different track and embrace consumer protection as one of the responsibilities of state licensure. Prior to the hearings, the major industry trade associations requested an audience with the Commission and offered to bargain. If the Commission would hold off, the trade associations said, they would encourage some house cleaning themselves. These are powerful trade associations, representing the majority of funeral directors in the country. They have had decades to do the kinds of things they were offering in trade for an enforceable federal regulation. Reform was not a new idea. Jessica Mitford's book had been around for more than ten years. Contrary to what one would hope from the muckraking tradition in the country, the book had sold a lot of copies, but there had been scant change in funeral industry practices or in the nature of self-regulation at the state level.

The Commission decided to proceed with the hearings. The trade associations, rather than go ahead with reform from within, took up their stations to resist reform from without.

Whatever changes that have occurred or been considered since 1976 would surely be cut short if the Congress prevents the FTC from promulgating what has turned out to be a very modest rule.

Finally, as participants in the rulemaking process, we found that under Magnuson-Moss rules, it was a fair proceeding and allowed for an exhaustive examination of funeral industry practices and analysis of more than 20 issues of fact.

All interests were represented and had ample opportunity to contribute their thoughts in writing, in testimony and in an audience before the Commissioners at the time they were reaching their decisions on the evidence.

Because public participation funding was available, even consumer organizations were able to participate as parties of interest along side the trade associations and FTC staff.

CEPAC was one of the consumer parties to the proceeding. Unfortunately for some of our expenses were possible a far more extensive contribution that could otherwise have been possible, given our small annual operating budget. Most funding, as was

able to supply expert witnesses, including an economist and a consumer information specialist; we were able to transport our own members to the hearing sites to testify; with the help of our member societies, consumer organizations and academicians, we conducted a survey of consumers and funeral directors designed specifically to answer some of the questions raised by the Presiding Official; we were able to retain counsel to cross examine witnesses at one of the hearings, prepare rebuttal submissions and final comments and to represent us before the Commissioners. Five other consumer and senior citizen organizations were able to participate because of the availability of reimbursement funds. Because of this, the record is richer than it would otherwise be, and provides a better basis for Commission decision-making.

The FTC accumulated more than 40,000 pages of record and conducted more than 7 weeks of public hearings which clearly document the nature and prevalence of unfair funeral industry practices that need correction, now.

Thank you.

izing of significant numbers of people around a limited set of interests and objectives. Thus in the world of industry the laboring man formed his trade union; the industrialist found strength in his trade association; and the practitioner sought collegueship in his professional organization. It is the problem of the formal organization of funeral directors into various limited-objective types of associations, and the growth, prosperity, problems, issues, and changing forms and functions of these associations that will form the burden of the following chapter.

BACKGROUND FACTORS

Occupational Organization: The modern concept of an occupational or professional association was almost entirely a creation of the 19th century.³ Although prior to that time professional organization had been limited to the fields of medicine and law, this period witnessed an astonishing extension of occupational organization among a vast number of vocations and organized forms of personal services. A partial explanation of this extension is to be found in the progress of science and technology, which gave rise to numerous new professions such as engineering, architecture, chemistry and dentistry. In addition, the consequent social and cultural revolutions created a demand for all types of specialists trained to cope with the increasingly complicated machinery of changing patterns in government, business, and education; as a result we had the burgeoning of new occupations, such as various types of public administrators, accountants, secretaries, realtors, surveyors, patent attorneys, nurses, librarians, and the like.⁴ In consequence of these developments, there appeared a growing occupational self-consciousness among these and various personal and service occupations, and in vocations bordering upon the traditional or established professions. Two not unrelated

models of association commended themselves—professions and trade. The one was exemplified by the organizations of medical practitioners, and lawyers; the other, although less distinct in form functioned basically to define and help attain the interests of businessmen.

While the ends of these forms of collective association were not necessarily opposed, neither were they in any sense identical. Professional associations sought not only to formulate standards, control membership, and enforce an inspectional system, but most of all to assure the several clienteles of the high personal character and the good moral standards of their members. While in many ways seeking somewhat allied goals, trade associations subscribed to the proposition that the buyer-seller, or market relationship, is impersonal and calls for an awareness of both parties of values given and received. The trade association thus turned its attention primarily to the material interests of its own special membership; other matters, such as standards of character and the adequacy of training were held as definitely secondary in nature.

In those vocations where personal service was emphasized, it was a natural occurrence for associational activities to look to the model of the professions; for vocations involving merchandising transactions, on the other hand, the trade association, by the same token, offered the greater potential. It will be seen that in the case of each century foundal direction no one of these two associational models commended itself forcefully, to the exclusion of the other. Also, to create further complexity, the foundal establishments themselves were often patterned after the guilds, with master, journeyman, and apprentice relationships forming their internal personnel organization.

To omit associations, and particularly those of a professional and semi-professional nature to attain their ends,

two instruments have been available. The first of these is the use of educational prerequisites and training institutions in the indoctrination of new recruits in the professions. The system of educational requirements has been used by the occupation to control the supply of new members.

The second, which will be described below, is the regulatory system developed by the state as an outgrowth of its police powers. Systems of this type generally are incorporated into small bodies or boards empowered by law to set standards for admission to practice, to license, to establish codes, and in these and other ways to exert a significant measure of control over certain vocations.

Internally, the primary method for achieving vocation-wide definitions of relationships of the professional man with others in his field as well as with the community has been the ethical code of the profession. The licensing system marks the next step toward protection of professional status by giving legal status to the codes of ethics and by establishing a legal register of "qualified" practitioners.

Until the Civil War the established professions could scarcely be termed organized in terms of associational structure, and at that time in the service vocations and quasi-professions associational activities were virtually nil. In the remainder of the century, state, local, and national associations representing a wide range of vocations with professional aspirations were formed, and as a matter of immediate concern, pressed for the passage of state licensing measures. By 1900, of thirty-eight professional and technical vocations, twenty-one had been reached by at least one state of statutory legislation, with a total of nearly two hundred measures passed since then.² In the first quarter of the present century occupational licensing reached its peak, since then with rather fairly well set, the rate of enacting new legislation has noticeably declined, although the

number of different occupations licensed by one or more states continues to increase.⁶ Of the two hundred pieces of legislation mentioned, at least nineteen dealt with the funeral director and embalmer, since by 1900 that number of states had passed laws licensing one or the other of these occupations. Although we will return to the subject of licensing and state regulation of funeral direction and embalming, with emphasis on the latter, in a later section of the chapter, it suffices to point out at this time that the quarter century from 1875-1900 was marked by a tremendous growth of professional and trade associations, and that the impulse to professionalize seems to have diffused rapidly though many occupations whose earlier status was something less than that shared by such established professions as law, medicine, and the ministry.

Such then, is a portion of the backdrop of social and economic forces which have impinged upon the groping efforts of undertakers attempting to rise above the traditional status of providers of funeral paraphernalia and factotums of burial. One other set of broad-gauge social factors needs to be explored before the specific associational efforts and gestures of these individuals can be taken up directly. We turn, then, to the area of socio-cultural movements, examining two in particular; the general Public Health Movement, and the specific movement in America for Burial Reform.

Socio-Cultural Movements: a) The General Public Health Movement: The general awakening in social reform, humanitarianism, and philanthropy of the middle 19th century had its basis in the cardinal tenet of the dignity and worth of man. Being unique by virtue of his capacity for rational thought, man can discover the natural order of things and the laws that govern their behavior. Once having discovered these laws he may initiate action calculated to better him-

York, Mr. Camp repeated his proposal, adding the hope that "at no distant day would there be organized a grand undertakers' union upon plans similar to those of the 'Knights of Honor' or 'The Ancient Order of United Workmen.'"¹⁷

Although the idea of a fraternal, benevolent, and insurance organization did not fit the undertaking trade, the proposal was not without some effect, because it led Messrs. Nirdlinger and Gliddon to editorialize: "The desire for a more satisfactory understanding between the profession in various towns and cities should promote an immediate convention, even though it should impress those of only a small territory. Who will lead in this movement and carry it to success?" At this moment leadership among undertakers themselves seemed to be in the hands of Mr. Hawley, who perspicaciously pointed to the need for the formation of legitimate associations, "such as are for the improvement and protection of the interests of any profession or trade." These he maintained, "are good and worthy . . . whilst the clan or league for selfish ends is reprehensible . . ."¹⁸ Hawley then suggested that the representatives of the profession be communicated with, in the hope that a sufficiently favorable response would warrant holding a national convention in the middle of August, 1879. The next six months found the editorial pages of *The Casket* filled with comment on this scheme, including many letters written by undertakers from various states pointing out the obvious need for such a convention. Despite this strong support, the plan for a national organization at this time never reached the point of actuality, and it remained for the state groups to form first their own organizations before a coast to coast organization could be launched.

In November, 1879, Allen Durfee, well known Grand Rapids undertaker and compounder of embalming fluid, inserted a circular letter in *The Casket* asking Michigan under-

takers for an expression of opinion on the possibility of holding a "State Convention of Undertakers at some central point, say Grand Rapids, Jackson, or Lansing, for the purpose of forming an Undertakers' State Association, which the rapid advancement in the science of undertaking seems to demand." Response was immediate and so favorable that an *ad hoc* committee, composed of Allen Durfee, E. A. Tompkins, C. A. Conklin, Charles L. Benjamin, J. H. Roberts, and the Messrs. Sammons and Quincy, all prominent Michigan undertakers, was successful in arranging the first state convention of undertakers at Jackson, Michigan, January 14, 1880.

In his opening address, Mr. Thomas Glendon, editor of *The Casket*, who had been invited to help with organizational matters, recommended the appointment of several committees. One of these was to look to the formation of a permanent organization; another to draw up and submit resolutions; and a third to gather, edit, and publish the convention proceedings, disseminate information regarding professional duties, agree on rules to govern ethical advertising, indicate a policy to be applied to distributing price lists, and finally memorialize (*sic*) the legislature. Mr. Durfee, later elected first president, outlined the possibilities of the gathering and presented arguments for a permanent association. He hoped, moreover, that from the state association there might be born a national organization "as broad as the United States and as imperishable as our national union."¹⁹ His words were prophetic, and the Michigan Association did serve as the prototype not only of other state organizations soon to follow, but in many respects for the national association, still two years from its birth.

In the preamble of the Michigan constitution, the models of both trade and professional organizations were accepted, as the undertakers pledged themselves to form "into an

association for the purpose of mutually disseminating the most correct principles of business management, the best methods of protecting our own interests in professional practice, and the general good of all recognized legitimate undertakers.¹²⁰

The year 1881 was prolific in the formation of associations. Iowa, under the leadership of Mr. W. P. Hohenschuh of Iowa City, later to become an authority in the field of funeral directing and mortuary education, organized early in that year; Indiana led by Mr. S. R. Lippincott of Richmond was next; then Ohio, with Mr. John Sharer of Alliance playing an active role; and before the year was out undertakers had organized state associations in Wisconsin, Ohio, and Illinois—in that order. California followed suit the next year, along with Kentucky, Missouri, Nebraska, and Pennsylvania. Abortive attempts at organization were made at this time by Georgia, Kansas, and Minnesota.

By the middle of 1882, even while state organizations were being rapidly formed, leaders of the several groups were becoming increasingly conscious of the need for a national organization. The matter emerged from discussion into action when in January, 1882, at the insistence of President Allen Durfee, the Michigan Association passed a resolution stating:

... the time has come for the calling of a National Convention, for the purpose of forming a National Association, and the opportune time would be the third week in June next, and the place in the City of Rochester, in connection with the New York State Funeral Directors' annual meeting, and the National Fair of Funeral Goods, which is to be held there at the same time, and that the association appoint three delegates, with three alternates, whose necessary travelling expenses shall be borne by this association.²¹

This call was circulated among the various states, and one hundred and five undertakers, many of them leaders in their state associations, signed. Mr. Thomas Gliddon volunteered as Secretary, Pro Tem.

The next issue of *The Casket* contained, in large headlines, the following announcement:

1882

THE DAWN OF PROGRESS
NATIONAL FUNERAL INDUSTRIAL EXPOSITION
Commingleing of Inventors, Manufacturers and Professionals

A NATIONAL MEETING

Special Session of all the Embalming Experts

TWELVE PRACTICAL LECTURES

And Operating Lessons in a Special Amphitheater,
Under the immediate charge of

AUGUSTE RENOUEARD, at Rochester, N. Y.

Beginning Monday, June 20th and continuing six days

To close with a

Grand Complimentary Banquet at Niagara Falls,

ON SATURDAY, JUNE 24.

Instruction, Recreation, and a Great Reunion

On June 22, 1882, two hundred and forty-one persons appeared at the City Hall of Rochester, were welcomed by the mayor, and addressed briefly by Mr. Allen Durfee. Mr. Durfee reviewed the steps that led to the calling of the convention, remarking significantly, "The desire for a more rapid educational improvement, led me to believe that through meetings and associations much good might be accomplished, which could not be obtained in any other way." Mr. Robert Atkins, of Buffalo, N. Y., was elected temporary chairman and the business of organizing the association got under way.

include the Eastern Burial Case Association; the National Cloth Casket Association; the Metallic Burial Case Association; the New England Burial Case Association; the Casket Hardware Manufacturers' Association; the American Association of Cemetery Superintendents; and the Casket Salesmen's Protective Association.

A further impetus to group action, and therefore organization, developed out of the fact that other associations and agencies were looking to funeral directors for spokesmen or representatives with whom to transact necessary business on a state or national level. The problem of the transportation of the dead is typical. This problem reached a crisis during the Civil War, demanding general regulations when it became necessary to inspect trains at depots for improperly embalmed bodies, broken shipping cases, bodies bearing the germs of infectious diseases and the like. The powers of the National Board of Health being severely restricted, regulation of the transportation of the dead fell to states and smaller governmental agencies. The chaos of uncodified and non-articulatory rules and regulations dealing with this problem is well described by one exasperated funeral director:

By the laws of one city the certificate of death is pasted on the coffin or case, there to remain till its destination is reached; but before that, they are stopped just outside of another city with the order to detach it and bring it to their health office, and in return they will issue one. With this a State is traversed, and reaching a third city in the evening, they find though the entrance is easy, exit is denied until a third certificate is obtained, and as it is late there is nothing to do but remain all night, breaking all connections and involving perhaps from twelve to twenty-four hours' delay.²²

It should be stressed that when railroad officials went to funeral directors—as was natural—for advice concerning the

proper methods of handling and shipping dead bodies, they wanted—and their want created a need among funeral directors—a single, collectively-made answer, that would provide them with a uniform or standard practice. To supply such answer, it was necessary that the occupation itself should be organized to a point where agreement could be reached and declared. To repeat: until such single answer was made, and practice set up nationally in accord with it, funeral directors themselves experienced difficulty in shipping bodies.

While it could be easy to exaggerate the influence of these and similar needs upon the development of the associational impulse among funeral directors, the fact remains that to some extent occupational associations tend to create situations calling for other occupational associations, although much more compelling than these collective factors were two basic motivating forces impelling funeral directors into associational action. One was the need to protect themselves from excessive and therefore harmful competition from within their own ranks, and from destructive business practices by manufacturers and jobbers. The other was the urge to bring a sense of professionalism to what had formerly been for many a mere trade or sideline.

The need for protection from unfair, even though legal, competition within the occupation itself was quite evident. Protection was especially needed by funeral directors in Eastern and Mid-Western states where nearly any merchant who sold furniture could include a line of caskets in his wares, and thus threaten the very existence of recognized establishments.

In the year 1888, the first for which statistics are reliable, for every funeral director, that is, for almost every funeral establishment, there were about 4,700 inhabitants. In the above-mentioned Eastern and Mid-Western states, however, the proportion was smaller. Thus in New York the ratio was

one funeral director for every 3,200 persons; in Vermont, 1—2,000; Pennsylvania, 1—3,000; Michigan, 1—3,800; and Illinois, 1—3,600.²⁴ Despite the fact that death rates were about twice as high as at present, infant mortality was greater, and, while the gross average of deaths per funeral director country-wide was about 87, significantly, for the states in which the first state associations were formed, the figure was lower. Michigan had about 77 deaths per funeral director; New York, about 70; and Pennsylvania, about 60. In these areas competition was keen from fellow undertakers, a majority of whom, or nearly eighty per cent of the total number of establishments, were engaged in combination operations in which sale of coffins and caskets was a sideline. Thus from within the occupation, the established funeral director with aspirations toward becoming an independent seller of personal services and funeral merchandise exclusively—apart from any ideas about professionalism—frequently found the going rough. That irresponsible, marginal, or unsound competition may have kept within the law, as it then existed, could have been small consolation to a responsible operator facing it.

From without, the pressures, threats, and forces were enough to provide ample material for a speech delivered in 1884 before the Illinois Association and later read to the National Association, in which the burden of the argument was that the National Association must take immediate steps "in regard to the multitude of jobbers, drummers, quack professors, professional embalmers, or more properly speaking, embalming-fluid fiends, and the thousand and one other frauds that hang on to and suck the very life blood out of this profession."

The practice of "jobbing" lots of caskets to the funeral director, ostensibly to permit him to buy more economically in light of larger purchases, was an outgrowth of conditions

in the casket manufacturing industry itself. In 1888 although there were about 700 coffin shops and casket manufacturing houses, less than 175 of these were companies of any considerable size, and perhaps some two dozen were what might be called large scale producing units. While less than half of those in existence could easily have supplied the funeral directors of the land with a sufficient number of good burial receptacles, yet with the field so crowded it was almost inevitable that competition would produce less than the best product. Often cheap, shoddy, competitively priced coffins and caskets were literally dumped upon the funeral director. Curiously enough, because of the necessity of maintaining standards, the larger companies, despite their ability to mass produce, could not undersell and drive out the smaller, uneconomically organized coffin shops. The latter, through the "jobbing" system of sending out high pressure "drummers," could either cut prices to obtain an account, or would try to induce anyone with the desire to become an undertaker to lay in a stock of coffins "on consignment." Thus one of the most important *trade* problems of the funeral director of the late 19th century was protection from the kind of competition that would eventually ruin whatever community goodwill and social acceptance he already had earned.

At present writing, about one-sixth of all funeral establishments are combination operations, and these, it should be noted, are more likely to be found in the rural and small town areas of the country. In 1888, however, even in the more densely populated areas the ratio of single purpose to combination establishments was scarcely better than one to five; Pennsylvania had about 23 per cent of its funeral directors operating independently of any other business; Georgia, 21 per cent; Vermont, 24 per cent; and Illinois, about 25 per cent. Of all the funeral directors in the

country in 1888 about 23 per cent held membership in the National Funeral Directors Association. Many in combination businesses did not belong to funeral director groups because to them the funeral portion of their work was only a sideline. While many of these part time operators were men of excellent business and personal character and represented a transitional stage in the emergence of a trade into a profession, the degree of commercialization at which a few combination undertakers occasionally operated is illustrated by the advertisement reprinted from a country newspaper "in one of the Middle States" by *The Casket* in 1879.

DUTCH CHARLEY
MEANS BUSINESS.

IF YOU WANT TO STOP AT A GOOD HOTEL,
 go to the Rodman House, at Dutch Charley's.

IF YOU WANT A GOOD METALLIC COFFIN,
 go to Dutch Charley.

IF YOU WANT A WOODEN COFFIN, GO
 to Dutch Charley.

IF YOU WANT YOUR HOUSE INSURED,
 go to Dutch Charley.

IF YOU WANT A GOOD DRINK OF BOUR-
 bon Whiskey, go to Dutch Charley.

IF YOU WANT A GOOD GLASS OF LAGER
 Beer, go to Dutch Charley.

IF YOU WANT TO BUY WESTERN LAND,
 go to Dutch Charley.

IF YOU WANT TO BUY A CHEAP TICKET
 to California, go to Dutch Charley.

IF YOU WANT TO BUY CHEAP FURNI-
 ture, go to Dutch Charley.

IF YOU WANT YOUR PICTURE FRAMED,
 go to Dutch Charley.

IF YOU WANT A JUSTICE OF THE PEACE,
 go to Dutch Charley.

Figure 33. The Many Businesses
 of Dutch Charley

Another major factor motivating funeral directors to organize into an association was the desire on the part of certain outstanding and farsighted members of the group to professionalize their occupation, thus gaining for it and

for themselves as well, a higher degree of social estimation. In a period when sanitary reform and the general social movement embracing public health had gained widespread attention, and with this interest reinforced by terrible epidemics and plagues, many funeral directors found it natural to associate their functions with those of the sanitarian. This concept seems to have been present at the very inception of the National Association, at least among the acknowledged leaders of the group, and in more or less degree has been incorporated into the self-conceptions of funeral directors ever since.

Again, in arrogating to themselves the function of embalming, funeral directors were inevitably drawn into the company of the surgeon, the physician, and the physiologist. At first physicians were solely the ones to perform embalming. Later, as these two groups were drawn into closer association while embalming skills and techniques were being learned by funeral directors, the men of medical and biological science became the instructors, if not the founders of schools of embalming. Thus the association between the two continued. Even today, due to the demands of modern schools of mortuary science for cadavers, there continues to be a tendency for them to be located near medical centers; and in many cases, physiologists, pathologists and other categories of medical scientists are brought into the schools as instructors.

It seems a fair statement, then, that the association of funeral directors with members of the medical profession, sanitarians, and public health officials tended to contribute toward the development of the self-image of the progressive funeral director of the late 19th century as a sanitarian. His role as "sanitary embalmer," in a period when epidemics and plagues had the whole society fearful, conceivably enhanced the public estimation of his work, and consequently his own. This image, it should be remarked, like the image

in other professional groups, was not equally appropriated to themselves by all funeral directors. As with other occupations, all funeral directors did not share an equal sense of the high social importance of the round of tasks, nor were they equally prepared to make the personal sacrifices needed, to translate the high ideal into a daily way of working.

The terms "professional" and "profession" were seized upon at the first National Association meeting and were used repeatedly. As will be pointed out below, the leadership of the Association during the period was highly dedicated to the proposition that a program of action was essential to bring professional status to funeral directors and that words alone would not suffice. Nowhere is this better shown, perhaps, than in the 1886 presidential address of Hudson Samson, one of the most influential, and incidentally, best-educated, of the leaders of the Association. In blueprinting future policy he noted the failures of the past and then reiterated some suggestions which were to bear fruit in the succeeding decades:

We have to decide whether we will follow in the wake of the broom makers', box and basket-makers', bakers', . . . and butchers' associations. (They) . . . are intended to benefit men who work at manual labor; they resort to the boycott and the strike to carry their cause through, right or wrong. I will mention a few who take a different view of the realities of citizenship: the members of National, State, County, and City Medical Societies . . . the legal profession . . . clergymen . . . educators and Civil and Mining Engineers (have societies which) . . . assist one another across the hard places.

I would advise (funeral directors) . . . to convince our state Board of Health of the necessity of having a law passed that will compel all who have not been a certain number of years serving as Funeral Directors to pass an examination, and to serve a given time as an apprentice. I would have a Board of Examination appointed by the Governor whose duty it shall be to determine the fitness of applicants for license to serve as

Funeral Director: the Board should make such arrangements with the County Boards of Health as will best serve the purpose of keeping a complete register of all Funeral Directors. . . .

I would have a law regulating the care and burial of the dead the same as there is for the practice of medicine—the same as you will find in the several States to insure the better education of practitioners in dental surgery . . . I would advise an active step be taken in some State to have an act passed regulating the burial of the dead and we, as a National Association, to help, aid and assist in bringing about such legislation.

Do not think that we can get the public to RECEIVE US AS PROFESSIONAL MEN by simply meeting in convention and making constitutions and by-laws, by adopting a code of ethics, or getting our State Legislature to pass an act governing the burial of the dead, or by getting the National Burial Case Association to do what will be of as much advantage to themselves as to us, guarding against funeral reform, building crematories, or having a report on our trade journals, or providing a text-book that will assist you in beating the Egyptians.

All of these are means toward the desired end. One thing that will do more to bring about a professional feeling among the Funeral Directors is for us to act and talk as though our competitors were gentlemen; if we gain professional fame it will be by us as individuals leading pure, upright, professional lives.²⁸

Characteristics of Early Leadership: Among the funeral directors of the latter part of the 19th century leadership was in the hands of fairly well-to-do and fairly well-educated middle-class persons who leaned in the direction of creating a profession out of their trade. A check of the social characteristics of forty-two better-known morticians of the day, whose biographies appeared in *The Casket* from 1876-1880 and who played an active leadership role in associations, reveals several interesting facts: most of these men were born in America and a preponderant number resided and operated their establishments in the Middle Atlantic and New England states. Investigation of the occu-

Advertising was dealt with in a negative vein, and, among other things, advertising in the "daily prints" was prohibited. Proper procedure and protocol in the case of two directors being called at the same time was indicated, along with the injunction to the profession to carry on in times of epidemic and contagious diseases. Also outlined were the correct methods for dealing with shipping and removal cases. The first Code of Ethics closed with the statement:

There is, perhaps, no profession, after that of the sacred ministry, in which a high-toned morality is more imperatively necessary than that of a funeral director's. High moral principles are his only safe guide.²⁵

The Code appeared in the appendix of all subsequent printed proceedings and was broadcast among the various trade papers and journals. The most controversial section, as it turned out, was that dealing with advertising. Undertakers had traditionally printed and distributed private cards, handbills, and in the daily papers had invited the attention of the public to their wares. (See Plates 25, 26.) Although the Code was reaffirmed "as law" at the Toronto meeting in 1889, it was evident that the tradition of advertising had not been erased, and that, instead some concessions to the practice eventually might have to be made, since in cities many if not most funeral directors were continuing to advertise. A related problem, foreseeable in the not too distant future, and more difficult to make rules for and to dispose of was the mass operation type of funeral home, whose business was based on a large volume of cases attracted by cut-throat advertising and other highly questionable promotion methods. But these were developments that were to come to a focus shortly before World War I. As the century closed the Code of Ethics remained in precisely the same form as when created and adopted by the National Association in 1884.

Communication Within the Trade: In a rapidly growing country such as America during the 19th century the expansion and proliferation of industries and businesses posed many problems of organization, not the least of which was the building up of an effective system of liaison and communication among and within related vocations, businesses, and between these and the general public. For funeral directors this problem was complicated by their dispersion, highly fluctuating number, and diversification—nearly four-fifths were operating their establishments in combination with other businesses, or practiced undertaking as a sideline to other services offered the public.

One of the first agents of communication to the funeral directors was the casket salesman, or "drummer." Casket salesmen and jobbers covered extensive territories, competed briskly, and were not without some self-consciousness as to the out-of-the-ordinary nature of the products they were distributing. The itinerant nature of the occupation was put to verse by "Timber Awl" whose "The Song of the Coffin Drummer" appeared in one of the trade papers, the first stanza of which sets the theme of itineracy:

From Illinois, Iowa
Nebraska and Dakota,
To Michigan, Wisconsin too,
And lovely Minnesota.
From Lake Superior's Copper mines
Through Hoosier Indiana,
To Mississippi's cotton field,
And Low Louisiana,
I furnish wooden overcoats
To many an Undertaker;
For Banker, beggar, one and all,
The Butcher and the baker—
Baker—
Butcher and the baker.²⁰

for decades, assumed new importance and claimed the attention of the funeral directors' association.

One of these was the matter of transporting the dead. As pointed out above, in default of any set of comprehensive federal regulations or of a codification of rules and restrictions laid down by the several states, municipalities and other governmental agencies, funeral directors were faced with exasperating and time-consuming red-tape and delays in their efforts to secure needed transport for the dead. To further complicate this problem there were no general rules governing the practices of railway baggagemen in this matter. Under these conditions it became apparent to funeral directors that collective action was necessary to provide solutions for these and related problems to be worked out cooperatively not only with governmental agencies but with other organizations concerned. The relationships with the railway baggagemen's union was as wide as the group's jurisdiction among the railroads.

Because the problems were national in scope, the answers could not be local, state, or even regional, but must be national; and to provide national answers, an effective, national association was a *sine qua non*. The need for concerted action on the problem of railway transportation of bodies was first brought to the attention of the National Association in 1888 when a special committee of the National Association of General Baggage Agents listed seven suggested rules with the recommendation that they be laid before the several State Boards of Health, the National Conference of State Boards of Health, and the National Association of "Undertakers," with a view toward "establishing some simple, effective rules which could be the guide for all Railroads and other Transportation Companies in the United States and Canada." The response of the National Association was to send a committee to meet with the baggagemen

at their next regular meeting, and the eventual result of the subsequent conference was a list of rules adopted by the baggage agents' association and sent to the various boards of health with the recommendation that they become universally adopted and put into effect.

In the majority of cases the health boards were highly receptive to these recommendations, and incorporated them into their own growing body of health and sanitation rules and regulations. Impetus was given to this reception by the decision of the Conference of Officers of the State Boards of Health at Nashville, Tennessee, in 1897, to accept virtually unchanged the suggested rules as they had been worked out by the railway baggage agents and the funeral directors. The committee deliberations of the latter two groups lasted almost a decade and turned out to be well worth the time inasmuch as the resulting joint decisions could be clearly, authoritatively, and decisively stated at the Conference of State Health Officers, somewhat to the surprise of the "distinguished physicians present" who "conceded to the funeral directors who were present superior knowledge of the subject in hand."³⁴

The rules, in brief, prohibited transportation of bodies dead of certain deadly and contagious diseases; permitted the transportation of others dead of less virulent diseases only when thorough embalming and disinfecting had been completed; specified conditions under which bodies dead of non-contagious diseases might be transported; dealt with the problem of persons accompanying the dead body; and listed the steps in securing transit permits, applying pasters, and the like. These rules, finally, were approved by the National Board of Health.

The importance of this development becomes clear only in light of its effects. Funeral directors could henceforth look forward to increased standardization of public health

rules regarding transportation of the dead. For the first time they were able to convince somewhat skeptical baggage agents—who after all over-saw the handling of these dead in transport—and the even more skeptical physicians and public health officers, that embalming could render a corpse germ-free and innocuous to the living. Finally, they gained professional recognition for their work in embalming; that is, the affidavit of a funeral director that he had embalmed a body was accepted at face value henceforth by baggage agents and public health functionaries alike. Little wonder that the NFDA's meeting in 1897 was carried out in an atmosphere of jubilant excitement, and that in addition to the formal report they received, the delegates insisted on informal recitations by all the committee members of the inside story of the "victory at Nashville."

All problems of transportation were not solved in this one success, however, and with the development of checking systems and the increase of transfer companies, new issues were brought before the Association with the result that the major point of discussion of the National Convention of 1907 centered around new transportation problems, as brought up in an address by Mr. A. Traynor, General Baggage Agent, Union Pacific Railway Co., on the subject of "The Silent Passenger."

Problems relating to health and sanitation, however, were not exhausted by the work accomplished by the funeral directors on rules and regulations for transportation of the dead. For the past quarter of the 19th century the most important concern in this area, and one that had involved both trade and professional aspects, centered on the setting up of licensing apparatus to regulate and control the practice of embalming, along with an extension of effort to bring about other health-related legislation in the mutual interests of both the public and of funeral directors. As early

as 1884 a Committee on Resolutions in the National Association stressed the need for uniformity in death certificates in order that "a great many important facts might be obtained, and tables of vital statistics prepared that would be of use to our National Board of Health."³⁵ In the same year the evils of the quack professors of embalming were brought to the attention of the National Association by the Association of Undertakers of the State of Illinois, who asked that it "recommend that the several State Associations in their respective States, charter such schools as would be above reproach; recommend a course of instruction, to embrace anatomy, chemistry and a thorough course on disinfectants, and to last at least three months." In light of the fact that the so-called "schools" often were conducted for periods of three days to a week, this proposal sounded only slightly less than revolutionary. Another delegate, a Mr. Russ of Chicago, hoped for a form of State or Federal control of the occupation in such manner that any man who put up his name as an undertaker would be "compelled by the State, and indorsed by the United States, that he should be a man of good integrity, sober, industrious, and truthful in every respect." Oscar N. Crane, second president of the National Association, stressed the same point in his presidential address, in 1885, when he remarked:

It seems to me that the time is not far distant, if not already dawning on us, that there should be a legal standard; some qualifications; some governing laws; some moral fitness; necessary, which should be required and regulated by Statute both of State and Nation; a standard of ability, and morals which on strict examination, the applicant should be, must be, found to possess.

And then, and not till then, will he be permitted to engage in a calling so solemn and at the same time, so full of professional responsibility.³⁶

especially the last—had by no means been perfected. Adequate controls over the quality of embalming fluids were lacking, and, as a result, side by side with standard brands produced by reputable companies, the market was flooded with an incredible variety of untested and uncertain compounds, produced both by fluid houses and by individual compounders.

Other problems were posed by a lack of a firm, universal definition of what constituted proper training to enter the occupation. Most undertakers by 1900 felt that a diploma from some kind of embalming school was sufficient evidence of proficiency to qualify a candidate. As with medical schools, however, there was no general agreement as to what should be the educational requirements for admission to a course, what the course content should be, how long the course should last, and what qualifications schools should have in faculty and physical equipment.

A diploma from an embalming school could mean anything from exposure to three days of demonstration made by an itinerant "professor," whose real purpose might be to sell a particular brand of embalming fluid, to graduation from a six-months' course offered by a well established school of embalming.

The lack of state laws for licensing constituted another problem. While the states of Washington, Oregon, Nevada, Tennessee, California, Arizona, Arkansas, Louisiana, Mississippi, Wisconsin, Michigan, Ohio, Kentucky, Florida, Vermont, Maine, Massachusetts, New Jersey, Rhode Island, and Maryland; and many others all had scattered bits of legislation regarding the embalming and burial of the dead, they lacked formal licensing laws. The viewpoint held by some members of state legislatures was that funeral service legislation was passed only

to secure the benefit of the funeral director, and therefore as wholly a favor to him, constituted a serious impediment to the development of much needed licensing and regulatory law.

Unsavory advertising and cut throat competition had not yet reached its peak in 1900, but the lack of an unequivocal and general definition of what constituted legitimate promotional practice led later to grave abuses. This issue has by no means been successfully resolved.

Even though the term "public relations" was unfamiliar in 1900, and the felt need for them probably much less than it is today, then as now good public relations constituted another problem for the profession. The successful efforts of funeral directors to reach an agreement with funeral goods manufacturers, and the resultant practices in restraint of trade, did little to reassure the public of the service bases of the funeral director's work. If the medical profession looked askance at funeral directors, so also did the American press, which sustained the stereotype of the funeral director as the traditional undertaker, the "dismal trader" of doubtful character and indifferent feelings.

These and similar problems were not then and are not now unique to the occupation of funeral directing. They are the problems that in a general sort of way every profession met with at its emergence, and from time to time is called upon to solve again.

Perhaps the most difficult problem still facing the funeral director at the turn of the century was the all-encompassing question of professionalization itself. How far should the effort to professionalize the group be carried? By its very nature the occupation could have swung sharply and far toward one or the other of opposites, or remained in some intermediate position. It faced the choice of becoming either an out-and-out trade or business, or a profession, or of

compromising these extremes. It merits repeating that the *personal service* elements in funeral directing have a natural "professional" orientation; the *impersonal service or merchandizing elements* a natural "trade" orientation. Up to 1901, the great decision had been straddled, although the movement was toward professionalization. But it was apparent that in order to create a cleavage in the public mind between the undertaker who furnished merchandise and rendered services, and all other undertakers, a strong element in the occupational group, using the NFDA as its chief instrument, was successfully building a set of standards or measuring sticks, which could be incorporated into a licensing procedure. In order to eliminate the competition of merchants and others, who sold caskets but did not furnish service and, later, "facilities," both professional-minded and trade-minded groups endeavored, as we have seen, by means of trade agreements with manufacturers and supply houses, to restrict opportunities for buying such merchandise. Further, they attempted to penalize competing manufacturer-merchants by not buying from them, and by encouraging other funeral directors to buy only from recognized manufacturers who were not engaged in or directly supporting the service end of the business.

In 1900, in the minds of most undertakers or funeral directors, *both* forms of conducting one's occupation and thus serving self and mankind were merged into a concept of a vocation. And, like most of those occupations which during the 19th century had become self-conscious and sought to improve their economic and social status, funeral directing had achieved some kind of organization and internal order among its members but by no means had fully accomplished its aims. Meanwhile, it was not considered necessary to make the choice of being professional men or tradesmen as the point of self-designation for funeral direc-

tors. The impulse to associate, however, provided the impelling motive for directing and molding the desires of men who would better the status of their occupation, and thereby elevate the condition of their work, their security and legitimate rewards, the good opinion in which they were held by other occupations and by the public at large, and finally, their own self-esteem.

CITATIONS AND REFERENCES FOR CHAPTER XI

1. *Occupational Licensing in the States* (Chicago: The Council of State Governments, 1952), pp. 16-17.
2. *Ibid.*
3. *Ibid.*, p. 18, quoting from A. M. Carr-Saunders and P. W. Wilson, "Professions," in the *Encyclopedia of Social Sciences*, vol. VI, p. 477.
4. *Ibid.*, p. 21, *passim*.
5. *Ibid.* Figures taken from Table A, p. 23.
6. See *ibid.*, p. 21.
7. James A. Tobey, *The National Government and Public Health* (Baltimore: The Johns Hopkins Press, 1926), pp. 21, ff.
8. James A. Tobey, *Riders of the Plague* (New York: Charles Scribner's Sons, 1930), p. 78.
9. For a more complete account of the activities of the Sanitary Commission, see George W. Cooke, *Unitarianism in America* (Boston: American Unitarian Association, 1902), pp. 180-184.
10. Habenstein, "A Study of the Cremation Movement in the United States," *op. cit.*, p. 82.
11. Augustus Cobb, *Earth Burial and Cremation* (New York: Putnam, 1892), p. 136.
12. Adapted from the table on page 117 of John Storrs Cobb's *A Quarter Century of Cremation in North America* (Boston: Knight and Millett, 1901).

Mr. GORE. Thank you very much. You discuss the state of bereavement in your testimony very eloquently. Do you agree with the previous panel that there has been a change in the state of mind generally that people have nowadays when they come into discuss the purchase of a funeral?

Ms. CLEMMER. Society as a whole is more willing to consider the subject of death. Elizabeth Kubler-Ross' book has had a great effect. There are courses on death education, and so on.

Mr. GORE. Yes.

Ms. CLEMMER. I don't think any of this prepares the family for dealing with the actual situation of bereavement and the way they will behave.

You hear people say all the time, "I knew he was going to die but it didn't hit me until he actually died."

I think it is very healthy that this is much more out in the open, but I don't know that it makes the family any better able to discuss things with the funeral director without being upset, the fact that they anticipated death or that they have maybe even taken a course on it 5 years earlier.

Mr. GORE. You still think they need protection?

Ms. CLEMMER. I am convinced of that. I would refer again to this book which tells funeral directors how to deal with people who have made up their minds ahead of time.

You know, it trains them in how to handle the very situation where they have considered things ahead of time.

Mr. GORE. Let me quote from one passage. I think it is this book "Funeral Director and His Role as a Counselor"?

Ms. CLEMMER. Yes.

Mr. GORE. This is a publication of the National Funeral Directors Association?

Ms. CLEMMER. Yes.

Mr. GORE [reading].

As to the matter of guilt in changing previously made plans, the counselor should point out that the previous decisions were made in the belief that they were the best for all concerned. Now, when that is not the case, certainly changing decisions so that they will not [sic] meet the needs of all concerned would also be the desire of the deceased.

This is the passage you were referring to?

Ms. CLEMMER. Yes.

Mr. GORE. I cut you off, Ms. Cohen.

Ms. COHEN. If the situation is changed in terms of how a consumer faces the funeral purchase, some of this change may be that people are becoming increasingly aware of the fact that not only does this have an emotional side but it is a commercial transaction and it is important to find out ahead of time, or at the time, what the commercial aspects of the transaction are. People definitely want information and are frustrated by their inability to get useful information at the point of purchase.

Mr. GORE. On page 3 of your statement you say the National Funeral Directors Association has said that the present funeral rule is not nearly so offensive and that the new staff has deleted most of what was most objectionable to them.

You say that these statements come from reports in the American Funeral Director? I am interested in who wrote these statements and what this publication is.

Ms. COHEN. The American Funeral Director is a trade journal.
Mr. GORE. Yes.

Ms. COHEN. I believe it is the largest of several trade journals. I don't believe it has any affiliation with the trade association per se, but I am not certain.

This report comes from the July 1979 issue of the American Funeral Director. It is a report of a State convention in Indiana at which some spokespersons for the National Funeral Directors Association were describing the FTC rule to the people who were at the State conference.

Mr. GORE. The Funeral Directors Association in its testimony complained that the FTC rule would not regulate groups such as cremation companies, cemeteries, et cetera, and groups such as yours. Could you comment?

Ms. COHEN. Cremation companies are selling funeral arrangements to the public and would fall under the FTC rule. I stand corrected on that if I am wrong.

As to cemeteries, we would be pleased to see some sort of regulation of cemeteries because consumers do face similar sorts of problems with cemeteries.

In our comments during the course of the rulemaking proceeding we also recommended that some of the provisions of the rule extend beyond funeral directors. An illustration is the requirement for disclosing prices of caskets. At the time when there was a requirement to have a casket price card, we thought it should apply to manufacturer's showrooms as well as funeral homes.

We thought also that the people who manufacture embalming fluids and sealer caskets should have the same obligation upon them not to misrepresent the preservative capabilities of their products.

Memorial societies are not regulated by the proposed rule because we are consumer groups. We don't sell any services or merchandise to the public.

Mr. GORE. Counsel for the minority, Ms. Whitney?

Ms. WHITNEY. In your testimony earlier you said you all receive approximately 400 letters a week from people.

Ms. CLEMMER. Yes.

Ms. WHITNEY. Can you give us an estimation of the number of letters pertaining to specific complaints?

Ms. CLEMMER. It might depend on the article that inspired that particular round of letters. We do not receive 400 letters every week. We receive thousands upon thousands after an article appears and might receive only 10 or 20 a day until some other article appears. It depends on the article.

The typical letter simply says something like, "I was so glad to learn there was an organization that could help me. Send me information." It might be one sentence, a postcard, "Let me know where the memorial societies are in Hutchinson, Kana."

Several of them—and they are not complaining. We rarely receive an actual complaint. What we receive is somebody who in the course of asking for information, as these people who are writing to me were, stop and detail what happened to them. We have no way of knowing statistically whether that is the tip of the iceberg or

whether that is everything bad that ever happened. You might have your guess and I would have mine.

I would say a small percentage, perhaps 5 percent, contain complaints which are detailed.

Some say something like, "I wish I had heard of memorial societies when my sister died. Send information." We have no idea what happened, no details or anything like that.

Ms. COHEN. There was an analysis done of some of the letters we received in response to one article in "Modern Maturity," a magazine of the National Association of Retired Persons. This analysis is on the Federal Trade Commission record. Somebody went through all the letters and sorted them out and categorized the kinds of complaints made.

I don't have the statistics in my head but it was done.

Ms. WHITNEY. Somebody did that?

Ms. COHEN. It was a sampling of letters, a random collection of some of the letters we received. We received 20,000 letters in the course of a few months from that one article.

Ms. WHITNEY. Somebody did do a sampling.

Ms. COHEN. Yes.

Ms. WHITNEY. This came up earlier. I don't know whether you were in the room at the time. The witness from the NRTA/AARP testified to the fact they received 16,000 letters in response to that magazine article. I think we are talking about the same one.

Ms. COHEN. I don't believe so. I wasn't in the room during that testimony. The letters of response to that magazine article I refer to came directly to the Continental Association office.

Ms. WHITNEY. I see.

Ms. COHEN. He may have been referring to the same article but he might not have been.

Ms. WHITNEY. Very well.

Ms. CLEMMER. Are you going on the subject of complaints at all? There are several things not on the record today.

Ms. WHITNEY. That is all I had on the subject of complaints. I was curious as to the number of letters you had containing specific complaints.

In their testimony today the National Selected Morticians will show us results of a survey done in Virginia and Texas which show that price itemization in those States exerts an upward pressure on the prices of inexpensive funerals. By an average amount ranging from \$208 to \$443 per funeral.

Do you continue to support price itemization in the face of these kinds of facts and can you explain for the record why?

Ms. COHEN. I have not seen the study so it is difficult to comment. I have seen some allegations that itemization will make prices go up. I don't understand why that is necessarily the case.

If a funeral containing 10 ingredients costs \$1,000 today I don't understand how quoting prices separately can make prices go up.

I have seen some descriptions of what happened in New Jersey. The example I saw used was that when people saw that a limousine cost only \$20 why not have two?

What is neglected in this example is that those people who didn't want a limousine at all saved money, and if they didn't want something else they saved money.

The virtue of itemization is that it allowed the customer the opportunity to see the various components of the package and their cost, decide what it is they want and don't want and make a price value comparison on each individual ingredient.

Ms. WHITNEY. The National Selected Morticians can clarify this question of unit pricing versus itemization when they come on.

Ms. CLEMMER. It begs credulity to have consumer group after consumer group saying they want price itemization so they pay only for what they purchase and the funeral directors wringing their hands that they would do price itemizing but it would cost consumers more money. That makes no sense at all.

Ms. WHITNEY. It would be interesting to see the kinds of statistics they have for us in those States that have implemented price itemization.

Ms. CLEMMER. I am not aware Virginia has a good solid price itemization law.

Ms. COHEN. Nor am I.

Ms. WHITNEY. We will ask the same question when they come on.

Ms. CLEMMER. We are talking about itemization prior to making a selection and not getting an itemized bill 10 days later in the mail.

Mr. GORE. Virginia requires itemization after the fact.

Ms. COHEN. Recalling the discussion going on earlier about the difficulty of conveying information over the telephone and the presumption on the part of the funeral directors that it would be misleading and confusing to the customer, I think perhaps some of the difficulty with that is their assumption that the prices you are quoting will be package prices. If you are quoting itemized prices over the telephone, if someone calls up and asks what the prices are of caskets, it does not seem to me it would be confusing at all for them to say, "Well, here are the prices of our 10 caskets" or "Prices range from so much to so much." Prices are itemized and clarity then is available. Cost of embalming is x. Cost of using facilities for viewing is y. It should be clear even over the telephone.

Ms. WHITNEY. On page 2 of your testimony you stress that people want price and legal information at the time they are making funeral arrangements but you do not mention people also are extremely interested in the reputation of the funeral director, geographical proximity, and the religious affiliation of the funeral home.

Wouldn't you agree these are also important considerations at the time of death which have been somewhat overlooked in our hearing today?

Ms. COHEN. Definitely they are a very important consideration to many people.

Ms. WHITNEY. So price and legal requirements are not everything.

Ms. CLEMMER. I think regardless of whether they are choosing a black or white funeral home, whether they have a certain ethnic group or a certain religion, they still would like a price and legal information. I don't see the two as exclusive at all.

Ms. WHITNEY. That is just something which has not come up today.

Ms. CLEMMER. I think it is very important to most people.

Ms. WHITNEY. That is all I have.

Mr. GORE. Thank you.

I would like to invite you, Ms. Clemmer, to supply for the subcommittee if it is not too burdensome on you, the additional items that you referred to concerning complaints. You had some additional thoughts. I want to move it along and get through our hearing today because it is going on too long.

If you would supply that for the record, without objection we will hold the record open at this point to receive that information.

Ms. CLEMMER. Very well.

[The following letter was received for the record:]



CONTINENTAL ASSOCIATION OF FUNERAL AND MEMORIAL SOCIETIES, INC.

Suite 3100, 1830 L Street N.W. • (202) 251-4821
WASHINGTON, D.C. 20036

March 21, 1980

Representative Albert Gore, Jr.

1417 Longworth

Washington, DC 20515

Dear Representative Gore:

When we appeared before the Subcommittee on Oversight and Investigations on February 21 you asked for us to submit for the record additional comments on the subject of consumer complaints and funerals.

It is accurate, and the funeral industry makes much of it, that the Federal Trade Commission receives few consumer complaints about funerals compared to the number of funerals held annually in the United States. The explanations for this low figure are compelling, and we appreciate the opportunity to help set the record straight.

The two basic reasons why few people file complaints about funerals are: 1) most families know so little about funeral requirements that they do not realize that they have grounds for complaint; and 2) even if they did realize this, the nature of the purchase--a funeral--makes complaining an unseemly thing to do.

The FTC found "ignorance" about funerals to be pervasive. Families that are not familiar with state laws on embalming, cremation, and burial do not know that they have been misled when a funeral director assures them that embalming is needed for public health reasons, or that a casket is required for cremation, or a vault for burial. The Continental Association knows that these misrepresentations occur with some frequency because they are typical of the problems people write to us about. But, it is only after

EXECUTIVE DIRECTOR

ELIZABETH C. ELLERBE

OFFICERS

REBECCA A. COHEN

President

Washington, D.C.

ELIOT R. ELIN

Vice President

Minneapolis, Minn.

JAY CHERRY

Secretary

San Diego, Calif.

LORENCE BERSON

Treasurer

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Executive Director

San Diego, Calif.

WILLIAM F. GAVIN, C.P.A.

Representative Gore, page 2, March 21, 1980

reading an article on the subject of funerals that tells them that caskets are not required for cremation, for example, that they write to us to ask if that is really true. (And this letter to us is one of inquiry, not a complaint filed with the FTC or another consumer office.) Obviously, with so little known about funeral requirements, and for most people, only a funeral director to ask for more information, it is not surprising that few people realize when they have been taken advantage of.

Arranging a funeral is, for most families, a very difficult task emotionally. And for most of them it is essential for their mental health that they put the funeral experience behind them and get on with their lives again. Most people do not want to have to relive the details of such a painful time over and over again in letters, on complaint forms, in hearings, etc., and thus delay their recovery from grief.

And for most families complaining about a funeral "goes against the grain"--it seems disrespectful of the dead. When a family has lost a dearly loved relative, the loss itself is so great that filing a complaint about the funeral--perhaps over a few hundred dollars, or a misquoting of state funeral laws--seems in bad taste, and even absurd.

And typically people complain about purchases that continue to annoy them--a TV that functions poorly every evening, a car that burns too much oil or stalls continually, etc. They complain in hopes that the TV company or car repair shop will get the item functioning well again. In contrast, a funeral is over and done with, literally buried, or burned, and can not be a daily irritant to the family. Furthermore, it is obvious to the family that no amount of complaining can "fix" the funeral; a funeral cannot be repaired.

Much of the level of satisfaction that people seem to have about funerals is based on the funeral director having acted sympathetically when the family was very upset. It is certainly true that most funeral directors treat their clients with concern and courtesy, and most families are, of course, appreciative.

In 1976, in preparing testimony for the FTC's funeral hearings, the Continental Association designed and disseminated the only survey taken on the specifics of the proposed rule. Our survey did show consumer satisfaction

Representative Gore, page 3, March 21, 1980

with funerals. It also showed overwhelming support for, and the need for, the proposed FTC funeral rule. I am appending the question and response as it appeared in our 1976 testimony.

To close with but one example from the survey: a woman responded to questions about the funeral indicating great satisfaction with the funeral director, saying, "he was wonderful." In response to the question about embalming she replied, "Because of state laws my husband had to be embalmed twice."

She is one of the statistics of which the funeral industry boasts-- someone who is pleased with the funeral and never files a complaint with the FTC, although no state law, to our knowledge, required double embalming. We hope that Congress will note how vulnerable to misrepresentation are the widows arranging funerals.

Sincerely yours,

Elizabeth C. Clomer

Elizabeth C. Clomer,
Executive Director

Attachment

Testimony of Rebecca Cohen,

FTC Hearings on Proposed Funeral Rule

Washington, DC 1976

page 41

"One of the most dramatic findings of our surveys of consumers was overwhelming support for a government regulation. This support was demonstrated by all categories of consumers--those who had never arranged a funeral before, those who had arranged a funeral and were dissatisfied, and, most strikingly, those consumers who had arranged a funeral within the past five years and gave every indication that they were totally pleased with the way it was handled.

"Here is the question posed and a tabulation of the consumers' answers:

22. Would you favor a government regulation that required funeral directors to:

	Yes	No	Don't Know
give price information over the phone	556	78	52
give specific information about the price of each item of merchandise, service and facility before you made any decisions...	574	17	14
ask permission before embalming the body	490	47	50
give a list of all available caskets and their prices before you have to choose	524	14	7
give each customer a short written statement of what the law does and does not require you to buy.....	580	15	9
have an inexpensive cremation container available for people who want one.....	531	19	37
let each customer choose what to include in the funeral.....	563	15	19
tell customers that the cemetery might sell less expensive outer containers for the casket.....	523	44	39

Mr. GORE. I would like to thank you both for your testimony. It has been excellent and I appreciate your assistance.

I would like to call Johnnie B. Rogers of the Texas Funeral Directors Association.

Please be sworn. Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ROGERS. I do.

Mr. GORE. Thank you for appearing here today and thank you for your patience.

**TESTIMONY OF JOHNNIE B. ROGERS, GENERAL COUNSEL,
TEXAS FUNERAL DIRECTORS ASSOCIATION**

Mr. ROGERS. I did not have a prepared statement for good cause. I offered to withdraw my appearance if that would inconvenience the committee but the staff assured me—

Mr. GORE. Do you have introductory remarks that you would like to make?

Mr. ROGERS. Yes, sir.

Mr. GORE. Please proceed.

Mr. ROGERS. My name is Johnnie B. Rogers. I am with the law firm of Rogers, Hughes & Herman in Austin, Tex. For 23 years I have been general counsel to the Texas Funeral Directors Association.

My purpose in coming here today, Mr. Chairman, is twofold. This subcommittee heard a statement of intense disparity of the funeral industry in general and Texas funeral service in particular at your last meeting.

I presume to point out some of the misrepresentations of what I consider to be deliberate deceptions of Dr. James Reveley.

First let me put the witness in a perspective that Dr. Reveley neglected to do. He is a competitor in San Antonio, Tex., or so considers himself, to every conventional funeral home in that city, and there are several.

Every public communication that he has, including his advertising and his numerous public appearances, are designed to disparage conventional funeral services, and I would presume it is because he feels like that is what is good for Dr. Reveley's commercial venture.

Whether the funeral service in San Antonio is good, bad, or indifferent does not make any difference to him. Every ad that he runs in the paper, and he runs one almost every day, not only in San Antonio but in Austin, Tex., as well, he attempts to paint the conventional funeral service in a very bad light.

I don't know his entire purpose for coming before this subcommittee, but I do know that I was in Mexico City and the thing that got the headlines down there in Mexico City when he did appear in a Spanish newspaper—and I am sure in American editions which I did not see—sort of a rough translation was "Funeral director accuses foes of threatening his life."

I don't know what part that could possibly play in these proceedings, how it would be relevant material to anything that you are considering.

As a matter of fact, it wasn't any preview on his life he was giving you here that day. He has made that statement a number of other places in public hearings. I don't see any place on the record of San Antonio where he has ever made a report of a threat on his life to the authorities there. I don't know how much documentation he has furnished the subcommittee since his appearance here, but I challenge you, Mr. Gore, I think you particularly cross-examined him on several items that he mentioned, about the threat on his life for one, and I would equate that morally to perhaps your saying that some Republican threatened your life and so everybody in your district should vote for a Democrat.

I would say the best documentation of his statement that he has gotten a lot of pressure from people in the funeral business and kept him in the newspapers where he can tell his story to the public, the best documentation would be his scrapbook, and I suggest you use a subpoena duces tecum and get those.

I would speak also to what I understand is the undergirding question of this inquiry—should there be Federal regulation of the funeral industry? We are confronted in Texas, not only from Dr. Reveley but others, with a great many pieces of misinformation, a great many deceptive statements about our new Texas law which we are proud of as being in the public interest.

Let me give you an example of what Dr. Reveley said about our law. There is no way you can please him with the type of statute that you would write down there to regulate the funeral services.

He said formerly that the State law provided that each funeral home would have five caskets, adult caskets. That is true and correct.

Then he said that because we wanted—and he talked about the Texas Funeral Directors Association—we wanted to punish the small businessman and the small operator, we recommended it be increased to 10, that the small businessman could not afford the additional five adult caskets for display.

Obviously at the time we recommended 10 we were trying to be responsive to what had been divulged at the Federal Trade Commission hearing as well as at other places that the public wanted as wide a selection as possible. We were trying to give them a wide selection of caskets, for instance.

We felt like that if a man who was big enough only to have 5 adult caskets would have to expand it to 10, he could not stand the inventory cost of 10 of the most expensive caskets made, and that he would have a good range of caskets of 10, but it was changed back to 5 primarily at his insistence.

Dr. Reveley tries to make a lot out of various amendments to the bill and how they were offered, their chronological history, and the nuances of meeting.

I say that the Texas bill was written and prepared by the Texas Legislative Council, the drafting arm of the Texas legislature.

We had a conference with the young man who drafted the bill. Our only request of him was that he be very careful that everything that was required of funeral service in the proposed FTC rules be included word for word or paraphrased to be substantially the same as the proposed FTC rules at that time.

I submit to you, gentlemen, that today we have such a law in the State of Texas.

On that 22 or 23 chart list of requirements under the 1979 rules, we omit only one, and I am prepared to take that up with you, Mr. Gore, and I am sure you will give me a chance to have some conversation and it will give you a good workout, too. We do not agree that we ought to be required to give, by law, a price list over the telephone.

Every other rule that is promulgated or proposed to be promulgated by the Federal Trade Commission has been included in the Texas law.

It is amazing to me as to Dr. Reveley's great faculty for twisting the facts. Let me give you an example of his testimony. He says a lot of funeral directors will send a party off into a casket selection room and say, "Go in there and find what you want, what will satisfy the needs of your family, and you make that selection yourself." This is absent any high pressure salesmanship.

Dr. Reveley says it has been his experience that when you send somebody off in there by themselves not accompanied by the funeral director they will spend on the average of \$100 more than if they were accompanied by the funeral director.

I don't know how to please the man. On the one hand you hear the criticism that you do have high pressure salesmanship, and that should be avoided because of the unique situation and the bereaved family present at the funeral home.

We do everything we can to answer legitimate public criticism, and we have done it in Texas, and we think our law displays that.

We were the primary and principal motivating factor behind the passage of the new act. We underwent sunset review. I say to you in all candor that our State administrative agency got some of the lowest rankings of any State agency down there, and we knew the change had to come about. We have brought it about and we have a good law.

I bring you up to the Texas position today in this manner, then:

The Texas funeral directors do not believe we need nor do we believe that the consumers of Texas need another layer of regulation. We have a good law. We now have a good State regulatory agency. We have a good trade practice forcibly enforced by our attorney general's office, and our State board of morticians has four of the nine members who are lay members.

The sunset committee recommended only a 6-3 mix for every regulatory agency down there. We voluntarily went even beyond that, but we do understand that part of the function of the regulatory agency is not simply handling consumer complaints which we share with the attorney general's office, but also it is the licensing agency which requires a great deal of expertise and professional knowledge and information to be a good effective licensing agency.

We see nothing sinister in a 5-4 mix of professional and lay members of that board. We think it is working fine. We would suggest that you talk to some of those very noble citizens who are now serving and giving their time on the State board of morticians without any previous connection with the funeral service.

I have heard Chairman Pertschuk say on a number of these talk shows and other public appearances that he seems to enjoy

making—and he does a good job; he is a clever man and bright and you know he is the guy in Washington really looking after you, so I know he enjoys it—and he said one thing to me that I took to heart—not me personally, but I am listening and I believe what he says. He says:

I don't want the Federal Trade Commission to be interventionist. We want to exert only what authority the Congress gives us, and in cases of absolute necessity and emergency, if you will.

I say to you that that type of regulatory intervention is not needed in Texas today and it won't be needed next year. We are going to go forward with our new law. We can enforce it, and we will enforce it.

If Chairman Pertschuk was really telling me the truth over that TV tube, if he really doesn't want to be an interventionist, I would suggest to him that a good demonstration of that attitude would be to include in his rules a provision—and I will give this to you, Mr. Chairman, and I will let you be the great champion of this—give us a provision in those rules for State compliance.

We are willing to undergo—if we send our rules to FTC and they refuse to approve them, we are willing to go to an adjudicative hearing. We will take it up with them and we will see who is right or wrong about it. If we cannot prevail, then we lose those rules insofar as compliance with the Federal Trade Commission rules are concerned if granted. You have done it in a number of other legislative areas, as I am sure you are aware.

But the FTC seems to be saying to the funeral services, "We don't want to hurt you." We have an old home expression that says, "Hold still, Mr. Catfish, I just want to gut you."

Well, we have never seen an apparatus of Federal regulation that didn't grow and grow and grow. We don't believe, in the final analysis, that funeral service ought to be engulfed by the FTC.

Thank you.

Mr. GORE. Thank you. Did your association support the progressive features of this new Texas law?

Mr. ROGERS. All the way, sir.

Mr. GORE. You didn't fight them as the bill was being enacted?

Mr. ROGERS. I have to catch a plane and I will be as brief as I can.

Mr. GORE. All right.

Mr. ROGERS. We wrote our bill, and it was a good, tough, and stringent bill to the extent we went down there and had this conference with the attorney general's office—legislative counsel rather—told them we wanted to fit the pattern of the FTC.

He came out with a tough bill. We took it and got sponsorship.

Then Senator Doggett, our principal antagonist and a close buddy of Dr. Reveley, and I am sure you have his name up there several times, and he probably sent a communique on me—at any rate, he came out with a bill of his own.

We got down to a committee hearing, and there was talking about combining the two since they were similar in nature.

I will say in all candor to the committee our bill was tougher than Senator Doggett's. He prevailed on me, and this is a matter of political discretion, to let his bill pass out of committee in deference to ours, and we agreed. It was a good bill.

This Doggett bill is law today. Our bill was tougher so obviously in several places.

Mr. GORE. Your bill was tougher?

Mr. ROGERS. It was tougher on the industry than Senator Doggett's bill. I can prove it to you if we have the time to sit down sometime over a stack and do it.

Mr. GORE. OK. I have a whole series of questions I can ask, but the record probably will speak for itself. Those reading it can decide for themselves whether it is believable that the Funeral Directors Association was aggressively pushing a bill that would have been tougher on the funeral industry than the bill which finally passed, and you were extremely disappointed you got a weaker law that was not tough enough on you.

Mr. ROGERS. No; you said that. I said in all candor I was saying to this subcommittee that Senator Doggett wanted his bill out of the committee and we certainly would not stand in the way of that. It was not as tough as our bill.

I don't want you to follow Reveley on morticians law, but take a look at the statute.

Mr. GORE. Were you disappointed your bill did not pass?

Mr. ROGERS. No, sir. I got some complaint from my clients: "What are you doing turning your stuff over to the opposition?"

Mr. GORE. I won't press it. The record will speak for itself.

Mr. ROGERS. OK.

Mr. GORE. A couple brief questions. What is the address of your association?

Mr. ROGERS. State Highway 35. I don't know just exactly. I know where you are going. It is in the same building as the State board of morticians.

Mr. GORE. The association owns the building?

Mr. ROGERS. Yes, sir.

Mr. GORE. Your association rents the space to the Texas Regulatory Commission?

Mr. ROGERS. To the State of Texas.

Mr. GORE. To the State of Texas?

Mr. ROGERS. Yes, sir.

Mr. GORE. So the State body charged with the responsibility of regulating the funeral industry operates out of space rented from the Texas Funeral Directors Association.

Mr. ROGERS. Yes, sir. I would presume any time the State of Texas, its legislature, or board of control that handle leasing arrangements in the State of Texas, any time they think that is unsavory or should not be done I am sure they will put an end to it and nobody will be hurt one way or the other.

Mr. GORE. You said you had been counsel to the Texas Funeral Directors Association for 23 years.

Mr. ROGERS. Yes, sir. I was counsel to the State board of morticians about 10.

Mr. GORE. At the same time?

Mr. ROGERS. Yes, sir.

Mr. GORE. Simultaneously?

Mr. ROGERS. Yes, sir.

Mr. GORE. Did that ever present you with any kind of conflict?

Mr. ROGERS. Not a bit in the world. I am glad you asked the question, as they say.

Are you a lawyer?

Mr. GORE. No; I am not.

Mr. ROGERS. All right.

Mr. GORE. I am trying to understand you.

Mr. ROGERS. I don't mean to be that obtuse, and couldn't be if I wanted to be.

Lawyers worry a good bit about whether they have a conflict of interest. I explored this with the State board of discipline. I convinced both clients there is no conflict.

Mr. GORE. Maybe the public has a stake, too.

Mr. ROGERS. I don't know how you do that, stand on a car some place and say, "Sign up one way or the other." However, there is a public interest. The State board tries to preserve that public interest, sir. It is State agency in the State of Texas. A while ago you asked somebody about whether it is a regulatory agency. Our State bar is.

The Funeral Directors Association is just a trade association. For them I make no policy. They have a full board of directors, about 25 members. They make all the decisions.

I sit there and advise them on such things as income tax and maybe a lease sometimes. I advise them on leases, things like that, as a lawyer ordinarily does.

I go to the State board of morticians. All I advise them is that this is the law. You can apply it any way you want to. I am telling you the law. I didn't prosecute people. I had nothing to do with that. They operate that themselves.

The only reason they had similar counsel is twofold. In the first place, they could not get the attorney general's office—talking about 10 years ago—they couldn't get the office to provide manpower there to provide a lawyer for them, so they had to go to outside counsel and their law authorized outside counsel.

I sort of got it by default. I am the only lawyer in Texas who knows anything about the funeral service because I have been there. I kind of got it by default.

However, nobody ever, sir, and as I say I am glad you asked the question, nobody has ever challenged one single act on either the State board of morticians or the State association as far as being an act in conflict with me. Never. Dr. Reveley, Senator Doggett—anybody—never has said that.

Mr. GORE. You used the word "sinister" earlier. It is not my intention to imply any such thing. The question is whether or not it is in the public interest, whether or not the advocacy of one group will be as vigorous if its perspective is dominated by the perspective of the other group.

Mr. ROGERS. I certainly realize, after everything started, you understand, in the aura of the Sunset Commission and the FTC proceedings, and that type of thing, that maybe somebody did have an interest there and wanted to know if we had the right kinds of laws and whether they are administered properly.

I didn't want to be an embarrassment to either of my clients. I withdrew from a nice little arrangement. I hated to do it but I did because I felt it was in the public interest that I do it.

Mr. GORE. Who is the present chief counsel to the State board?

Mr. ROGERS. They use the attorney general's office. They are supposed to have somebody there at every meeting from the attorney general's office.

Since September 1, 1979, they have had four different attorneys general there trying to construe and interpret the law for them, which makes it a little difficult for them. We are wading through it and we will all learn as we go along with the new law.

Mr. GORE. Thank you.

Ms. WHITNEY. I have no questions.

Mr. ROGERS. Thank you very much.

Mr. GORE. I certainly enjoyed your testimony. Thank you for being here.

I would like to call Mr. David C. Murchison, legal counsel for National Selected Morticians, and Mr. Larry C. Williams, Sr., legal counsel for the National Funeral Directors & Morticians Association.

Gentlemen, please stand and be sworn.

Do you swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MURCHISON. I do.

Mr. WILLIAMS. I do.

Mr. GORE. Thank you for being with us today. Again I apologize for the inconvenience the lengthy proceeding has caused you. I appreciate your patience.

Without objection, the entire written text of your statements will be inserted in the record. [See p. 334.]

Please feel free to proceed with any or all of it, as you see fit.

TESTIMONY OF DAVID C. MURCHISON, LEGAL COUNSEL, NATIONAL SELECTED MORTICIANS, AND LARRY C. WILLIAMS, SR., LEGAL COUNSEL, NATIONAL FUNERAL DIRECTORS & MORTICIANS ASSOCIATION

Mr. MURCHISON. In my prepared statement I have tried to present somewhat detailed documentation on four basic issues. I do not ask that I be permitted to read my prepared statement but I would like to summarize those four issues if I may.

Mr. GORE. Certainly.

Mr. MURCHISON. Then I would like to defer to Mr. Larry Williams, who is general counsel of the National Funeral Directors & Morticians Association, which is an association composed principally of black funeral homes located throughout the United States.

I might say that Mr. Williams has a thorough knowledge of the Federal Trade Commission proposal as well as its likely effects on the funeral homes which compose the association he represents as well as the members of the public who purchase funerals from those funeral homes.

The first issue I deal with in my prepared statement is the point made by many of the witnesses who have appeared here that the alleged improper practices covered by the FTC proposal are widespread. That simply is not the fact. The practices referred to by the prior witnesses were the subject of lengthy hearings at the Federal

Trade Commission, and a majority of them simply are not supported by the evidence.

For example, the hearing officer, who is called the presiding officer, who took this testimony and presided over the reception of evidence, made 10 or 12 very explicit findings as to the lack of prevalence or widespread character of these practices. I have not heard a witness here refer to those very explicit findings.

Let me give you several examples, if I may. First, the presiding officer, on the basis of the record, found that the rule provision that would prohibit taking custody of a body without prior authorization is not warranted by the record. He made an explicit finding on that one.

Second, he found that the alleged practice of refusing to release bodies to authorized persons is a rarity and that the record in this proceeding supports the position taken by the industry.

Third, he found and concluded that the alleged practice of requiring a casket for cremation is not prevalent.

Fourth, he found that the record will not sustain a finding that the practice of misrepresenting the amount of cash advances on billing statements is prevalent.

Fifth, he found that funeral industry members have not displayed less expensive caskets in colors known to be unattractive for the purpose and with the effect of dissuading customers from purchasing such caskets or encouraging customers to purchase the higher priced caskets.

Mr. GORE. If I may interrupt you at that point. Are all these things you are complaining of still in the rule?

Mr. MURCHISON. It is unclear what is in the rule.

Mr. GORE. Take the one you just mentioned. Is it still in the rule?

Mr. MURCHISON. I have no knowledge.

Mr. GORE. Most of the ones you have cited have been taken out of the rule.

Mr. MURCHISON. That is another point I would like to make; namely, there is nowhere published to my knowledge what is in or out of the rule.

We heard Mr. Kramer today covering for the first time what was in and what was out. I have no knowledge, nor do I think anyone else does, what is in or what is out.

Mr. GORE. Let me say that is because the final rule has not been published yet.

Mr. MURCHISON. That is right.

Mr. GORE. However, those things are not in the rule. I think your testimony illustrates in these cases the rulemaking process evidently has worked well as you would like to see it work.

Mr. MURCHISON. I do not know.

Mr. GORE. And it is directly relevant to our analysis of how the Magnuson-Moss procedure is operating.

Mr. MURCHISON. Yes, sir.

I think, at least on the basis of Mr. Kramer's testimony as I heard it this morning, it would appear that the principal feature of the rule which remains at this point is the matter of price itemization or price disclosure. Listening to his testimony, that appeared

to be the principal provision remaining in the rule, which relates to the second issue that I deal with in my prepared statement. Perhaps, then, I should move to that point.

Mr. GORE. As you wish.

Mr. MURCHISON. Beginning on page 8 of my statement I undertake to show that the rule provision on pricing is actually anticonsumer in its effects, not proconsumer, since the formula laid out by the FTC staff in the proposal will cause funeral prices to be increased substantially.

Let me tell you what I am getting at there. A short time ago, two States, Virginia and Texas, enacted State statutes which parallel the proposed FTC provision. Each statute requires the price itemization that the proposed rule would require.

Inasmuch as both statutes have become effective we have actual experience now to go on.

Mr. GORE. If I may interrupt you there. Did you say that the laws of Texas and Virginia replicate the FTC proposed rule?

Mr. MURCHISON. Yes, on the matter of price itemization.

Mr. GORE. Prior to the purchase or after the purchase?

Mr. MURCHISON. Prior to the purchase.

Mr. GORE. Both Texas and Virginia require price itemization prior to the purchase?

Mr. MURCHISON. That is correct. I have the statutes with me. The Virginia code provision requires that the itemized statement, and this is a quotation from the statute, "shall be furnished to the party contracting for such funeral arrangements at the time such arrangements are made if such party be present, and, if not present, no later than the time of the final disposition of the body."

I have checked today—

Mr. GORE. I thought you said earlier it was before the purchase.

Mr. MURCHISON. It is. I am saying at the arrangement conference when the funeral is purchased these disclosures have to be made.

Mr. GORE. After it is agreed to?

Mr. MURCHISON. Prior to agreement.

Mr. GORE. Where does it say that?

Mr. MURCHISON. I will reread the language. "Such statement shall be furnished to the party at the time such arrangements are made."

Mr. GORE. You read that to require an itemized price list before the purchase?

Mr. MURCHISON. Before the purchase.

Mr. GORE. Could you comply with that by making the agreement and then, after the agreement is made, sending an itemization of what the agreement covers?

Mr. MURCHISON. I don't think so. There is a very distinguished funeral director from the State of Virginia in the hearing room. I checked with him prior to testifying. I understand from him that the statute is being interpreted so as to require a full itemization disclosure prior to the purchase. That is what this sentence says to me. It is the last paragraph in the statute.

What we did was this: We conducted a survey of NSM members in the State of Virginia and in the State of Texas comparing the prices of funerals sold on a unit basis before enactment and comparing them with the prices of the same funerals containing the

same components after enactment. In Virginia, which put into effect the itemization requirement as of October 1, 1979, the results of our survey show that the average price of the lowest priced funeral has increased by \$443, or 54 percent, and the average price increase of the four lowest priced funerals was \$338 per funeral, or 34 percent.

Mr. GORE. How many people buy that lowest priced funeral?

Mr. MURCHISON. A large number. It is in no sense a leader item. My understanding is that if we take either the lowest priced unit or the four lowest priced units we find a very substantial part of the volume.

Mr. GORE. I would like to ask you to supply the subcommittee and for the record, if you would, the backup information regarding your surveys in Virginia and Texas, and if possible I would like to ask you to include the names of funeral establishments surveyed, correspondence or other communication with them regarding the survey, or implementation of the price itemization laws.

Mr. MURCHISON. Yes.

Mr. GORE. The full range of prices at the establishments, including the high end, and any other information that you have pertaining to the surveys.

Mr. MURCHISON. I would be glad to.

Mr. GORE. I know I am asking a lot. I also would like to see prices of funerals actually sold 1 year before and after the law's enactment, and for comparison of funerals NSM members in Maryland and Oklahoma.

Mr. MURCHISON. We would be delighted to cooperate with the subcommittee and furnish the information you request.

Mr. GORE. I would appreciate it.

Mr. MURCHISON. As to Maryland and the other State, we have not conducted any such surveys but I suppose we could do so if we can be of help.

Mr. GORE. We are not asking you to conduct a special survey.

Mr. MURCHISON. You are certainly welcome to what we have.

Mr. GORE. If you have information from your members in those two States it might provide a useful comparison.

Mr. MURCHISON. Yes.

Mr. GORE. I think you have made a valuable addition to the record. I am sorry to interrupt you. Please proceed.

Mr. MURCHISON. Very good, sir. We are pleased to furnish the information you request. [See p. 387.]

In Texas the results were essentially the same. The survey annexed to my statement shows that after September 1 of 1979, which was the effective date of the new Texas statute, the average lowest priced funeral increased by \$287 per funeral and the average price increase of the four lowest priced funerals was \$202, or 23 percent.

Unless I add a caveat here what I am saying could be misinterpreted. I want to be fully candid with you.

What we surveyed were the unit prices of funerals prior to enactment of each statute and compared them with the precise same funeral following enactment.

The funeral following enactment does not represent actual sales but rather the total of the component items offered at those prices.

Mr. GORE. Now I understand. In other words, you are not comparing actual funerals, actual funerals sold.

Mr. MURCHISON. We are comparing actual prices here.

Mr. GORE. You are assuming that given itemization everyone continues to buy everything that was itemized.

Mr. MURCHISON. Exactly. This is what I am coming to next. I would like to explain it to you.

The question, obviously, in any analysis, is what is included in the unit and is it conceivable that anyone or any substantial number of people decline and do not purchase one or more of the itemized components.

In the State of Virginia, for example, the unit generally—and I think more than generally, I think ordinarily—is made up of minimal items that are customarily and regularly used. Let me tell you just what I am talking about.

The unit consists of the following: Removal of the body from the place of death. If it is on a highway, going out and picking up the body and taking it to the funeral home.

Two, preparation and care of the body.

Three, professional services, that is to say, directing the funeral.

Mr. GORE. In the next to the last category, is embalming listed separately or as a part of that overall item?

Mr. MURCHISON. It is included in that but I think it is required to be shown separately. I am quite sure.

Would you permit me to check back, Mr. Chairman?

Mr. GORE. Surely.

Mr. MURCHISON. Separate.

Four, use of physical facilities at the funeral home.

Five, automobile equipment.

Six, casket.

Mr. GORE. Each automobile is listed separately or is that a package?

Mr. MURCHISON. I will have to check again if you will permit me.

Mr. GORE. Yes.

Mr. MURCHISON. It is listed jointly. It can be broken down but it is shown in the statement under unit pricing as part of the unit, automotive equipment.

Mr. GORE. Very well.

Mr. MURCHISON. There has been a good deal of misunderstanding as to what goes into this unit. I am informed that these six items are usually the components when we use the term "unit." Extras, frills, other items of merchandise or service are not in the unit and they have always, to my knowledge in Virginia and Texas, been itemized separately, so we are not talking about anything beyond this basic nucleus when we use the term "unit." Therefore, it is highly unlikely that the statistics would vary as a result of declining any one of these six items because a vast and overwhelming majority of funerals consist of those six items.

There might be some adjustment, therefore, when you examine the actual billing statements following completion of a transaction but there will not be a very great difference.

Mr. GORE. Does that complete your statement?

Mr. MURCHISON. No, sir, I want to move to the third issue if I may.

Mr. GORE. Go ahead.

Mr. MURCHISON. The third issue we address is the matter of State regulation and adequacy of State regulation. We have heard a great deal about that today. We do have something to add which we feel is significant on this issue.

The proponents of the rule, without exception, have taken the position that State law or State regulation is inadequate because of the State licensing board composition and performance. That is the sole thing that is pointed to.

The position is taken that, since State boards do not have regulations paralleling the FTC proposal or dealing with the same subject matter, somehow the activities of the boards are inadequate because they do not deal with these practices. They do not protect the consumer. That is essentially the position of those who favor the rule.

The argument, if you will permit me to say so, is fallacious because it overlooks a key consideration, and that consideration is that in 49 out of 50 States of the United States, plus the District of Columbia, we now have on the statute books "little FTC acts"—that is how they are referred to—which are as broad as section 5 of the Federal Trade Commission Act, and which in each instance and in every one of those States can reach every unfair or deceptive practice covered by this proposed rule.

It is a totally separate system of statutes. They are not enforced by the State boards. The function of the State boards historically has been in the field of public health and safety, but that has not been where the primary responsibility for consumer protection has been delegated.

As I say, in 49 out of the 50 States there are now on the books statutes designed to protect the consumer, enforced by the attorney general, which are just as broad and cover each and every practice listed in the FTC proposed rule, and these States, as we show in our statement, have adequate enforcement and consumer offices in existence to enforce those statutes.

When we look at the State boards, then, and pretend that that is all that exists to protect the consumer in the funeral industry, we are just kidding ourselves. That is not the function historically of State boards. They have been forced into this area. The primary responsibility for consumer protection is the attorney general, and statutes are now on the books, usually at the urging of the Federal Trade Commission.

Mr. Chairman, the final issue that I would like to deal with is the matter of industry self-regulation. I would not take your time with it today except that Mr. Kramer covered it in his statement at length.

Frankly, I was appalled by the inaccuracies in his statement. I forgive him for those inaccuracies because he was not there at the time. He had nothing to do with it. Mr. Rodemeyer, who accompanied him today, also was not there. I was there. I was deeply involved in it since 1964, so if I may, I would like to set the record straight very quickly and very briefly.

The sequence of events was as follows:

In 1964, following the hearings conducted by the Senate Antitrust Subcommittee, NSM went to the Federal Trade Commission

and presented a detailed proposal for the issuance of voluntary trade practice rules. They were so-called at that time. These were to serve as a guide for the industry and possibly as a guide for the States. The proposal was very comprehensive.

In my statement I give illustrations of the practices that would be covered by that proposal, Mr. Chairman. For example, the proposed rules would have prohibited representing that the law requires embalming when such is not the fact.

Representing that the law requires a casket for cremation when such is not the fact.

Representing that a burial vault is required when such is not the fact. It continues on and on. It is detailed and comprehensive.

The staff of the Federal Trade Commission agreed with that proposal and recommended its adoption to the full Commission.

The Commission took it up and decided—and I set out the documents in my statement—that the matter of regulating funeral practices is best left to the States, not best left to self-regulation, as Mr. Kramer stated, but best left to the States.

Armed with that rejection, if you will, NSM adopted and put into effect its own code of good funeral practice which I submit is a model of what self-regulation should be.

I will not read all of this to you, Mr. Chairman, but because of questions asked by Mr. Gore of the previous witnesses, I would like to tell you three things that it does. I might add that the Federal Trade Commission will acknowledge that they for years have been impressed with this effort at self-regulation.

Let me give you three examples. The code requires the funeral directors who are members of NSM first to provide the public with information about funerals, including prices and about the functions, services, and responsibilities of funeral directors.

Two, to afford a continuing opportunity to all persons to discuss or arrange funerals in advance.

Three, to make funerals available in as wide a range of price categories as necessary to meet the needs of all segments of the community, and affirmatively to extend to everyone the right of inspecting and freely considering all of them.

Four, and this is a critical one, to quote conspicuously in writing the charges for every funeral offered, to identify clearly the services, facilities, equipment and merchandise included in such quotations, and to follow a policy of reasonable adjustment when less than the quoted offering is utilized.

Then we have a fifth one which requires the disclosure of full price information before the purchase is made. Those are annexed to my statement.

In any event, we adopted that code when the Commission refused to accede to the request for voluntary guides.

Then later, in 1974, in April of that year, NSM joined with the National Funeral Directors Association in petitioning the Federal Trade Commission to establish a formal proceeding looking toward the issuance of guides. They have a guides procedure there. Also, they were asked to consider a very detailed set of guides that the two associations submitted to them on April 18, 1974.

That petition, Mr. Chairman, has never been answered. I am being very serious about it. That was 1974. We waited 1½ years even to have it answered—1½ years to have it acknowledged.

In the intervening period of 1½ years, the rulemaking proceeding was initiated, whereupon I personally, on December 19, 1975, filed a motion with the Commissioners to convert the trade regulation rule proceeding to a guide proceeding in an effort to surface this problem of self-regulation versus a mandatory trade regulation rule proceeding. The Commissioners did hear us. We were heard fully a year and a half later, although it was evident to me that our prior petition, which had not been acknowledged, had never been submitted to the Commission for action or for consideration. I do not know that as a fact, but I suspect that it is a fact.

The Commission heard us, and following oral argument on March 12, 1976, the motion to convert the trade regulation rule proceeding to a voluntary effort was denied.

Mr. Kramer said today, if I understood him correctly, that the request was not denied, but was held in abeyance to see how everything turned out. I was served with an order denying it.

That is the history of the voluntary regulatory efforts we have made, and those are the facts. These facts are in the files of the Federal Trade Commission. I would urge that they be examined because we are perfectly prepared and willing, and we have been since the sixties, to work with them in a cooperative way and in an effort to achieve something in the voluntary area which does not require a double layering of Federal regulation.

I have spoken much too long, Mr. Chairman, for which I apologize, because I want to introduce to you Mr. Williams who also has a story to tell.

[Testimony resumes on p. 378.]

[Mr. Murchison's prepared statement and attachments follow:]

TESTIMONY OF
DAVID C. MURCHISON
LEGAL COUNSEL FOR NATIONAL SELECTED MORTICIANS
BEFORE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES
CONCERNING
OVERSIGHT HEARINGS ON
FEDERAL TRADE COMMISSION'S
PROPOSED TRADE REGULATION RULE
CONCERNING FUNERAL INDUSTRY PRACTICES

February 21, 1980

Mr. Chairman and Members of the Subcommittee:

My name is David C. Murchison. I am a member of the Washington law firm of Howrey & Simon, legal counsel for National Selected Morticians (abbreviated as NSM), 1616 Central Street, Evanston, Illinois 60201, a non-profit association of some 946 funeral service establishments located throughout the United States and in twelve foreign countries.^{1/} I appear today in response to your letter of invitation dated February 6, 1980.

1. Improper Practices Have Not Been
Shown to Be Prevalent

I have had the opportunity to review the testimony of witnesses appearing on February 13, the first day of these

^{1/} Canada, United Kingdom, Belgium, Sweden, Australia, New Zealand, Bermuda, Singapore, Guam, Philippines, Mexico, and Sri Lanka. NSM's membership consists of independent, privately-owned funeral service establishments. To qualify for membership, members "shall have an established reputation for honesty and fair dealing and a history of superior service to the public."

hearings. Each witness favored the proposed FTC rule on funeral industry practices, and most appeared eager to support the premise that abuses in the funeral field are widespread.

As one familiar with the record evidence in the FTC hearings on this subject, I find it regrettable, to say the least, that these witnesses have used a few isolated and obscure instances to justify a claim that improper practices are prevalent. The true facts are otherwise.

As the Subcommittee knows, the FTC staff conducted hearings on this subject over a period of many months, compiling a rulemaking record of many thousands of pages. Following the hearings, the FTC staff official who presided over the reception of evidence found as fact that a large number of the proposed rule provisions were not warranted by the evidence. For example, the Presiding Officer found as fact that--

- The rule provision that would prohibit taking custody of a body without prior authorization is not warranted by the record since funeral directors usually in fact receive such authorization.^{2/}
- The alleged practice of refusing to release bodies to authorized persons is a "rarity," and the "record in this proceeding supports this industry position."^{3/}
- The practice of requiring a casket for cremation is not prevalent.^{4/}

^{2/} Report of Presiding Officer, p. 57 (July 1977).

^{3/} Id. at p. 59.

^{4/} Id. at p. 64.

- The record will not sustain a finding that the practice of misrepresenting the amount of cash advances on billing statements is prevalent.^{5/}
- Funeral industry members have not "displayed less expensive caskets in colors known to be unattractive to many customers for the purpose and with the effect of dissuading customers from purchasing such caskets or encouraging customers to purchase the higher priced caskets."^{6/}
- The record shows only "very few instances" of defacing of less expensive caskets, and no finding of the practice of defacing can be made.^{7/}
- There is little in this record to justify a finding that internal sales plans are used to encourage the sale of higher priced products and services, "nor is there substantial evidence that such sales commission plans were used to discourage or penalize sales of lower priced ones."^{8/}
- There is "little in the record" in regard to sales and other merchandising practices that impede or obstruct the purchase of lower priced merchandise.^{9/}
- There is little evidence in this record to justify a finding of prevention of price-value comparisons by means of the arrangement of the casket selection room.^{10/}

^{5/} Id. at p. 68.

^{6/} Id. at p. 81.

^{7/} Id. at p. 78.

^{8/} Id. at p. 82.

^{9/} Id. at p. 83.

^{10/} Id. at p. 85.

- Both unit and functional pricers generally place price cards on or in caskets.^{11/}
- In the selling of outer burial containers (vaults and grave liners), there is no pervasiveness of any unfair or deceptive practice.^{12/}

Notwithstanding explicit findings such as these, proponents of the proposed FTC rule continue to argue, in general terms and without proof, that these same practices are widespread. Isolated anecdotal instances are sensationalized as typical, when such is not the fact.

There is a painful but perfect analogy that will illustrate this injustice of drawing general conclusions from atypical allegations. I refer to the current ABSCAM investigation, involving unproven charges against eight out of 535 members of Congress. By any standard, these eight instances, even if true, do not prove widespread or prevalent abuses by Congress generally. Yet the funeral industry is being condemned by an even smaller proportion of unproven allegations.

An editorial appearing in The Washington Post on February 16, in discussing the first day of these hearings, stated:

^{11/} Id. at p. 96.

^{12/} Id. at p. 106.

The catalog of abuses brought before the subcommittee was staggering. For example, there was the story of the woman who was charged for embalming and for a coffin, although all that remained of her husband after the six-hour fire in which he died was some ashes.

The editorial does not explain how this one story plus a few others told to this Subcommittee constitute a "staggering catalog of abuses"--especially when one remembers that there were nearly two million funerals last year and ten to twenty million funerals during the time period examined by the FTC. There is also no explanation of why a transaction of this nature, which could readily be dealt with by local law enforcement officials as outright fraud, should be assigned to an administrative agency in Washington for correction.

Instead of addressing the facts in an objective manner, it would appear that a few special interest groups have engaged in an orchestrated political drive to secure adoption of the proposed FTC rule. For example, I attach as Exhibit A a bulletin of the Continental Association of Funeral and Memorial Societies describing its efforts "to save the funeral rule" by using the WATS line of another special interest group to contact Congressmen and urging that members of Congress be held "accountable" for supporting the Russo amendment.

The bulletin also asserts, improperly I believe, that the Speaker of the House worked on Mr. Russo's behalf "all day before the vote and may have turned as many as 30 pro-funeral rule votes into Russo votes."

The Continental Association has supplemented these special pleading activities with public statements designed to magnify and distort the degree of alleged abuse in the funeral field. At hearings held last October before the Senate Consumer Subcommittee, that organization used such misleading phraseology in its prepared statement as "chronic problems created by routine practices," "chronic and widespread problems," "a uniform insistence," "many funeral homes," "people regularly report," "often accompanies," "routinely misrepresented," "often pressured," "a marketplace characterized by practices like these," and "incidents span the country." In this context, repeated assertions were made that certain practices were widespread and prevalent--without disclosing that the FTC Presiding Officer had found to the contrary.

In addition, the Continental Association told the Senate Subcommittee that it receives 20,000 inquiries a year seeking information or complaining about bad experiences (Prepared statement, page 4; see also daily transcript, October 4, 1979, page 7, lines 13-15). No estimate was provided, however, of how many of the 20,000 letters contained allegations. Indeed, when Chairman Ford asked the Continental Association

how many complaints were received in a year (Daily transcript, October 4, 1979, page 24, lines 12-13), the answer was sidestepped by a theoretical explanation of why there are not many complaints (other than the obvious explanation that there are not many abuses) and by the assertion that complaints are only mentioned to the Continental Association in passing since it is not a complaint agency (Daily transcript, October 4, 1979, page 24, line 12 - page 26, line 3).

We submit that the unfocused, if not misleading, approach of the Continental Association to the facts is typical of that taken by other special interest groups seeking federal regulation of the funeral industry. Such groups have been unable to show--with hard facts--that the alleged practices are prevalent, as required by Magnuson-Moss, and are now pursuing, as an alternative, the lobbying activities described in Exhibit A. These activities create a poor environment indeed for fair and objective consideration of regulatory goals in the public interest.

2. Impact of Proposed Rule on Consumers

Another area of concern to this Subcommittee is the expected impact on consumers of the proposed FTC rule.

It is fair to ask: Will the rule help consumers? In particular, will funeral prices be lowered?

I suggest the answer is "no" to both questions.

Verifiable facts now indicate that the rule, if promulgated in its present form, would actually injure consumers by virtually eliminating low-cost funerals and creating a substantial upward pressure on funeral prices generally.

The proposed rule would require all funeral directors to create and quote a separate price for each and every component service and item of merchandise comprising a funeral. This pricing method would replace the present practice followed by many funeral firms of quoting a single or unit price for the basic funeral and separately itemizing only the optional extra items purchased.

The price itemization method proposed by the FTC has the surface appeal of permitting a purchaser to pick and choose from a laundry list of funeral components. But this is a superficial advantage when compared to the high prices that would result from the mandatory change from unit prices to price itemization. The experience of two states, Virginia and Texas, that a few months ago, using the proposed FTC provision as a model, mandated a switch from unit pricing to price itemization, now confirms beyond any question that the FTC price itemization method does in fact exert an upward pressure on the prices of inexpensive funerals by an average amount ranging from \$287 to \$443 per funeral.

NSM has conducted a survey of its funeral home members in Virginia using unit pricing before the effective date of the state statute requiring price itemization. The survey shows that, after October 1, 1979, the effective date of the new statute, the average lowest-priced funeral increased by \$443, or 54 percent, and the average price increase for the four lowest-priced funerals was \$338, or 34 percent. This survey is annexed as Exhibit B.

NSM has also conducted a survey of its funeral home members in Texas using unit pricing before the effective date of the state statute requiring price itemization. The survey shows that, after September 1, 1979, the effective date of the new statute, the average lowest-priced funeral increased by \$287, or 41 percent, and the average price increase for the four lowest-priced funerals was \$202, or 23 percent. This survey is annexed as Exhibit C.

The cause of such price increases is the costing procedure made necessary by the FTC provision. A funeral director using unit pricing can offer inexpensive funerals by recovering proportionately less overhead and profit from the prices of lower-priced funerals. Such costing method is similar to that of an appliance or vehicle manufacturer who recovers proportionately less profit and overhead from inexpensive models than on luxury models. Under price itemization, the funeral

unit is fragmented so to assign an individual price to each component. The price of each component, except the casket with its quality variations, cannot be varied, as a practical matter, from funeral to funeral, since to charge different prices for the same non-variable components would be discriminatory. For example, the price of a funeral component such as a funeral coach could not be varied from funeral to funeral. Under itemization, to avoid price discrimination, the price of such a standard component item must be the same. For this reason, component prices are determined by estimating the total number of funerals to be handled and arriving at an average overhead cost which is then allocated among the non-variable itemized components. On the other hand, under unit pricing, average overhead costing need not be used and lesser overhead and profit can be recovered from low-cost funerals, even though the package of non-variable components is the same as in higher priced funerals. The result is similar to the price increases that would occur if a restaurant manager abolished all his full-course "blue plate specials" and charged his customers on an a la carte basis for each component item.

After hearings on the proposed rule, the FTC Presiding Officer recognized that "mandatory itemization will probably result in price increases of lower bracket funerals."^{13/} The

^{13/} Report of the Presiding Officer, p. 103 (July 1977).

Commission staff also acknowledged that the "net result [of price itemization] would be that the total price of the least expensive funeral (with casket, embalming, viewing, and other services included) would end up being higher than the price of the exact same items offered in a package funeral."^{14/} To avoid this admitted consequence, the FTC staff at first proposed that lower priced funerals be exempt from the itemization requirement, but it subsequently abandoned even this concession to the certainty of price increases.^{15/}

NSM does not believe that a federal agency designated to protect the interests of consumers should promulgate a rule provision mandating a process shown by actual experience in two states to raise prices substantially. The FTC staff continues, however, to insist on price itemization, preferring its superficial appeal to the reality of its impact on actual prices.

It is against this background that we take this opportunity to alert the Subcommittee to the price itemization

^{14/} Proposed Trade Regulation Rule and Staff Memorandum, p. 34 (August 1975).

^{15/} "Provided, however, that the list may include total or package prices for any standard adult funeral service package under \$ _____. The items covered by any such single quoted price shall be specified, but need not be separately priced. However, if a customer wishes to decline one or more items, the price shall be reduced by at least the amount of savings accruing to the funeral home from the declination."

problem. If the rule is promulgated as proposed, the effect on funeral prices across the country can be expected to be the same as in Texas and Virginia.

It is indeed puzzling why special interest groups continue to press for itemization as a pro-consumer measure. For example, the Continental Association recently stated to the Senate Subcommittee that unit pricing prevents comparison of price and value and "obscures the fact that there is choice and all items are not required" (Prepared statement, page 5). Yet this statement misses the mark because "all items" are not included in the funeral unit, only minimal items ordinarily used.^{16/} Optional extras are typically itemized and separately billed. Should a consumer prefer not to utilize a component included in the basic unit, the correct solution is to allow a fair and reasonable credit or adjustment for the declined item. Thus, the anti-consumer effects of itemization can be avoided while assuring freedom of choice to the purchaser.

^{16/} Typically included in the basic unit are the following:

- (1) Professional and staff services.
- (2) Care and custody of the body.
- (3) Use of the funeral home.
- (4) Specified automotive equipment.
- (5) Acknowledgment stationery.
- (6) Casket.

In practice, all other services and items of merchandise such as vaults, clothing, additional automotive equipment, newspaper notices, flowers, and cemetery charges are itemized.

To assure consumer protection, Provision 4 of NSM's Code of Good Funeral Practice requires the funeral director to "follow a policy of reasonable adjustment when less than the quoted offering is utilized." See Exhibit D.

Faced with a similar issue, Congress has adopted legislative standards for full and fair disclosure governing analogous products (automobiles) that are commonly purchased on a unit basis without prescribing itemization of prices within the basic unit. Under the Automobile Information Disclosure Act of 1972, 15 U.S.C. § 1231, key descriptive price information must be posted on the vehicle, which information must include the basic unit price and separate prices only for optional equipment--standards of disclosure which reflect rather than dislocate consumer expectations and conventional trade practices.

We believe that no one funeral pricing method should be mandated, but that a funeral director who serves a less affluent sector of the population should be able to utilize any lawful pricing method that will enable him to offer funerals at reasonable prices, without forcing the less affluent purchasers to request a charitable discount. Some witnesses would have the Congress believe that unit pricing is a disclosure problem. On the contrary, it is a pricing method that has been and can be used to benefit the consumer. Any pricing method should be acceptable as long as it is not deceptive and as long as all goods and services received for the price are fully

disclosed. If NSM did not have the public interest in mind, we could have refrained from protesting the price itemization requirement and simply sat back to enjoy the questionable benefits of government-caused price increases. As good citizens, we do not believe that this is in the national interest.

It is interesting that among the FTC's avowed 1981 budget goals is the elimination of "regulations which cause unnecessarily high prices." The proposed trade regulation rule on funeral practices would be a good place to start.

3. Adequacy of State Regulation

The third concern of this Subcommittee has been stated as the adequacy of state regulation to obviate the need for a federal rule.

This same question was addressed in the FTC proceeding. As the Presiding Officer correctly stated in his report:

The question of the adequacy of state regulations and enforcement action is central to the basis and purpose of the proposed rule, for if in fact states are protecting their respective citizens, then an additional layer of regulations should not be necessary.^{17/}

Having thus stated the issue, the Presiding Officer in his report reviewed the composition and performance of state

^{17/} Report of Presiding Officer, p. 33 (July 1977).

licensing boards in such states as California, New Jersey, Missouri, Tennessee, and Florida and then reached the "summary conclusion" that regulation of funeral practices by state boards "has been dominated by industry interests to the detriment of consumers."^{18/}

This conclusion of the Presiding Officer missed the mark and was based upon an incomplete consideration of the facts. The flaw in his conclusion, as well as in the report's underlying analysis, is that it ignores the fact that, in every state, it is the Attorney General or a department of consumer affairs, not the state licensing board, that has primary statutory responsibility to protect consumers against practices of the type covered by the proposed rule. With the exception of a single state,^{19/} the Presiding Officer considered only the role the state licensing boards, bypassing completely the statutes and enforcement systems set up to prevent unfair or deceptive acts and practices.

The basic function of state boards is to assure, through licensing, that public sanitary and health standards are met. With respect to the consumer protection statutes of

^{18/} Id. at p. 44.

^{19/} In one paragraph on page 39 of his report, the Presiding Officer refers to enforcement activities of the North Carolina Attorney General.

the states, the Presiding Officer ignored altogether the sufficiency of their provisions, such as those patterned after the Federal Trade Commission Act, and the administration and enforcement of those statutes by Attorneys General and the consumer protection departments of the various states.

As a matter of public policy, no FTC rule should issue if the acts and practices in question are ~~re~~repressable under existing state statutes and state-level administration and enforcement programs. The answer is that the acts and practices addressed by the proposed rule are now reachable under state law in virtually every state. Hence, the proposed rule, in the words of the Presiding Officer, would merely add another "layer of regulations."

In a fact sheet^{20/} made public by the Federal Trade Commission on September 8, 1977, the Commission announced that "[f]orty-nine states and the District of Columbia have enacted laws more or less like the Federal Trade Commission Act to prevent deceptive and unfair trade practices."^{21/}

^{20/} Attached as Exhibit E.

^{21/} Only Alabama has yet to enact such a statute. However, a Governor's Office of Consumer Protection has been established to take any necessary actions on behalf of consumers. In addition, an Office of Consumer Services Coordinator has been established in the Office of the Attorney General.

According to the Commission, the following states utilize the "broad language from Section 5 of the Federal Trade Commission Act to prevent 'unfair methods of competition and unfair or deceptive acts or practices' in trade or commerce": Alaska, Connecticut, Florida, Hawaii, Illinois, Louisiana, Maine, Massachusetts, Montana, North Carolina, South Carolina, Vermont, Washington, and Wisconsin. A further group of states now has statutes reaching "all forms" of fraudulent and deceptive practices: Arizona, Arkansas, California, Delaware, Iowa, Kentucky, Maryland, Minnesota, Missouri, New Jersey, New York, North Dakota, Tennessee, and West Virginia. Another group of states, according to the Commission, has enacted statutes itemizing deceptive practices and providing a "catch-all" clause to reach other forms of deception. These states are Colorado, Georgia, Idaho, Indiana, Mississippi, Nevada, New Hampshire, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Virginia, and Wyoming. A final group has adopted the Uniform Consumer Sales Practices Act or a variation, containing deceptive practices coverage and extending also to unconscionable sales practices. These jurisdictions are Kansas, Michigan, Nebraska, New Mexico, Ohio, Utah, and the District of Columbia.

Like the Federal Trade Commission Act, the above fifty statutes

[Typically contain authorization for the administering or enforcement official to conduct investigations through use of subpoenas, to issue cease and desist orders, or obtain court injunctions to halt the use of anticompetitive, unconscionable, deceptive, or unfair trade practices . . .

and virtually all of these statutes also provide restitution, civil penalties, and class actions.^{22/} In addition to enactment of these comprehensive statutes, the states have uniformly acted to establish governmental departments and offices to provide effective implementation. Annexed as Exhibit F is a list of these departments and offices in all fifty states.

Thus, the state and local consumer protection agencies, including offices of the attorneys general, are fully competent to deal with unfair or deceptive acts and practices and are currently able to deal fully with the acts and practices covered by the proposed FTC rule. It was a major error for the Presiding Officer, the staff, and the Commission to look only to the state licensing boards in considering the adequacy of state regulation. The "little FTC Acts" of the states, many of which were enacted at the Commission's urging, now provide a fully adequate statutory framework within which to protect consumers against all practices covered by the proposed FTC rule.

4. Self-Regulatory Efforts of the Industry

Proponents of the funeral rule, both inside and outside the FTC, have continually sought to disparage the self-regulatory

^{22/} See Exhibit E.

measures adopted or proposed by the funeral industry. These measures have either been ignored or distorted by the rule's proponents.

First, we wish to comment upon the suggestion by Chairman Pertschuk before the Senate Consumer Subcommittee that the Commission's initiation of the funeral rule proceeding was in response to the intent and concern of Congress. He stated to that Subcommittee on October 5, 1979:

[E]ach and every rulemaking proceeding now pending before the Commission can trace its origins in large part to a history of congressional concern with marketplace abuses and the expectation of the responsible oversight committees that the Commission would exercise its authority to deal with those concerns. (Daily transcript, October 5, 1979, p. 13, lines 8-13.)

Each of the other rules this Committee examined this week and last--used cars, funerals, children's advertising and insulation, have a history of congressional involvement which either called for or which laid the foundation for Commission rulemaking proceedings. (Daily transcript, October 5, 1979, p. 14, lines 16-20.)

[I] was . . . referring . . . to the history that shows that each of these [rulemaking] proceedings has a history of substantial congressional concern. And by that I mean oversight hearings and reports by not one, but by several committees and subcommittee [sic] expressing concern over the problems and in many cases urging the Commission to take the kind of rulemaking action under our powers that we are taking. (Daily transcript, October 5, 1979, p. 88, lines 4-12.)

In the case of the funeral rule, exactly the opposite was the case. In 1964, the Senate Antitrust Subcommittee held hearings on funeral industry practices. As a result of those hearings, the Subcommittee decided against recommending legislation to regulate the industry and in no way indicated that it wished the Commission to take action of a rulemaking nature. As explained by Senator Sam Ervin:

I heartily concur with the subcommittee's decision to refrain from recommending any legislation pertaining to the activities of funeral directors.

It is my feeling that if there is any activity which is essentially local in nature that it is the burying of the dead and that it should be regulated at the local level. Ideally, ethical principles should regulate funeral directors but if they are unable to adhere to these principles then they should be regulated by State legislatures and not the Congress. By the same token, it is my feeling that the Congress should not make recommendations with regard to activities which are obviously local and intrastate in nature.^{23/}

In the intervening years following the Subcommittee's hearings, Congress has not seen fit to enact legislation or to suggest an approach differing from Senator Ervin's views or those of the Senate Antitrust Subcommittee.

^{23/} Senate Comm. on the Judiciary, 89th Cong., 2d Sess., Antitrust Aspects of the Funeral Industry, Views of the Subcommittee on Antitrust and Monopoly 69 (Comm. Print. 1967).

Yet, Chairman Pertschuk said to the Senate Subcommittee: "We submit that the record of these hearings does not support . . . a conclusion" of "reckless disregard of congressional intent" (Daily transcript, October 5, 1979, p. 15, lines 14-16). NSM submits that the Commission has indeed wholly ignored the Senate Antitrust Subcommittee's earlier work in this field and the Congressional view, as articulated by Senator Ervin, that "Congress should not make recommendations with regard to activities which are obviously local and intrastate in nature."

Second, since Congress has never expressed an intent or concern that should have led the Commission to propose federal regulation of the funeral industry, was there nevertheless a history of systematic and widespread abuses in the industry that came to the attention of the Commission so as to warrant initiation of the rule? The Commission would have the Congress so believe. Referring to the funeral industry, Chairman Pertschuk stated to Senator Ford's Subcommittee:

My information is that there was a history of abuse in that industry and a history of nonresponse. I don't believe--I don't think the Commission suddenly discovered that there were abuses in the funeral industry. I think there had been evidence accumulating for years of the very kinds of problems that the Commission addressed. (Daily transcript, October 5, 1979, p. 55, lines 14-20.)

This characterization of the reasons underlying the Commission's initiation of the funeral rule proceeding is completely erroneous, as was reported by the Subcommittee on Activities of Regulatory Agencies of the House Committee on Small Business when it held hearings on the funeral rule in 1976. The following excerpts from that Subcommittee's Report^{24/} show that the "spark" which generated the Commission's funeral rule proceeding was neither an expression of the intent of Congress nor a body of accumulated evidence indicating widespread consumer problems. Rather, the "spark" was an accumulation of "less than a dozen" consumer complaints (out of a universe of close to two million funerals per year) and a subsequent self-initiated 6-month staff program of reading magazines and dissertations and conducting some interviews with funeral directors. These excerpts include quotation of testimony by the originator of the Commission study of the funeral industry who later became the managing attorney of the funeral rule proceeding and who was one of the junior staff that Chairman Pertschuk conceded were "in effect conducting a vendetta," "who were particularly aggressive, and perhaps guilty of unfairness in dealing with the industry," and who "are no longer with the Commission" (Daily transcript, October 5, 1979, p. 16, lines 3-8, and p. 52, lines 3-6).

^{24/} House Comm. on Small Business, "Federal Trade Commission's Proposed Funeral Industry Trade Regulation Rule: Its Effect on Small Business," H.R. Rep. No. 94-1761, 94th Cong., 2d Sess. 16-17 (1976).

Mr. Russo asked, "Why did you investigate the funeral industry in the first place?"

To which Mr. Angel responded:

We looked into the funeral industry because it occurred to us this was a transaction in which there was a potential for the consumer to be victimized due to bereavement and the common-sense notion that a person who is making funeral arrangements operates at some emotional disadvantage. (Hearing transcript, September 15, 1976, p. 117.)

The staff indicated that when they first began to look into problems associated with the funeral industry, the FTC had "less than a dozen" consumer complaints. . . .

The concern so vigorously voiced by members of the Subcommittee was that with less than a dozen complaints, the FTC would launch into a \$500,000 project when there were so many other areas in which complaints existed that demanded attention by the FTC. Mr. Breckinridge said:

The people might well be served best by hearing their problems and their complaints in areas of prima facie violations of the law, rather than self-initiated areas where neither the magnitude nor complaints appear to warrant the expenditure of money that we are talking about here. (Hearing transcript, September 15, 1976, pp. 109-110.)

* * *

Mrs. FENWICK. * * * Did you consult the various consumer divisions of the States to see what they had in the way of complaints?

Mr. ANGEL. Number of consumer complaints? Only sporadically, only in a couple of States did we do that. . . .

Mrs. FENWICK. . . . To get triggered off by six letters and your kind hearts when you have thousands of consumers begging for help in other areas is to me absolutely an incredible way of operating an agency.

Mr. ANGEL: Your characterization is unfair. It was not our kind hearts and six letters which triggered the investigation We spent approximately 6 months reading magazine articles, dissertations, interviews with funeral directors.

Mrs. FENWICK. That is pointless.

Third, equally inaccurate were the statements made to the Senate Subcommittee by Mr. Kramer, Director of the Commission's Bureau of Consumer Protection, that "there has been continuous dialog with the funeral industry since the '60s" and that "[t]he funeral industry never responded with any form of self-regulation" (Daily transcript, October 5, 1979, p. 62, lines 7-8 and 14-15). We quote his statement in full:

Mr. KRAMER. Senator Cannon . . . I would like to come back to your earlier point about regulating industries that don't need regulation. As Commissioner Dixon indicated, there has been continuous dialog with the funeral industry since the '60s. They have met with the commission several times and several times proposed various forms of self-regulation. The commission encouraged them to go ahead with it. The commission also indicated that it would not stop its own activities pending those activities--pending the industry going ahead.

The funeral industry never responded with any form of self-regulation. On the

other hand, where industries have responded with forms of self-regulation, such as in our veterinary investigation, such as in our investigation of the psychological associations, the commission has explicitly and affirmatively issued reports where it has said in light of industry responses to self-regulation the commission will not regulate.

So, the response in the funeral industry was a response to the fact that the industry had not in fact itself responded to any form and to any of its proffered offers of self-regulation. We responded because the industry did not. Where we have instances of industries responding by self-regulation, we have affirmatively restrained our hand and said we would not regulate. (Daily transcript, October 5, 1979, p. 62, line 4 - p. 63, line 3.)

This statement misstates the facts. As the FTC's own records show, the sequence of events was as follows:

In 1964, NSM requested the Commission to issue voluntary Trade Practice Conference Rules and submitted twenty-seven specific rules for consideration. For example, the proposed rules would have prohibited the following:

Representing that the law requires embalming when such is not the fact;

Representing that the law requires a casket for cremation when such is not the fact;

Representing that a burial vault is required when such is not the fact;

Representing that the law requires the use of a sealed casket when such is not the fact;

Representing that any burial practice or procedure is required by any custom or usage when such is not the fact.

Thereafter, "the staff recommended that the requested Trade Practice Conference be approved and that hearings be held on the basis of the guides submitted by NSM. The Commission decided, however, not to proceed with hearings on the NSM funeral industry guides,"^{25/} and the Chairman of the Commission advised by letter in November of 1964 that "the problems of this industry can best be handled at local levels."^{26/}

Following the Commission's rejection of NSM's application for a Trade Practice Conference, NSM adopted and put into effect its own self-regulatory Code of Good Funeral Practice and made compliance with its terms a condition of membership. Among other things, the Code^{27/} requires NSM members:

^{25/} Unfair Practices in the Funeral Industry: A Planning Report to the Federal Trade Commission, Division of Evaluation, Bureau of Consumer Protection, June 29, 1973, p. 4. The FTC staff states: "[W]e should note that a number of the proposed guides were worthwhile" and "would improve existing conditions. . . ." Id. at p. 7.

^{26/} Letter of The Honorable Paul Rand Dixon, Chairman of the Federal Trade Commission, to The Honorable William S. Moorhead, Member of the House of Representatives, dated November 30, 1964.

^{27/} NSM's Code of Good Funeral Practice is annexed as Exhibit D.

1. To provide the public with information about funerals, including prices, and about the functions, services and responsibilities of funeral directors.

2. To afford a continuing opportunity to all persons to discuss or arrange funerals in advance.

3. To make funerals available in as wide a range of price categories as necessary to meet the need of all segments of the community, and affirmatively to extend to everyone the right of inspecting and freely considering all of them.

4. To quote conspicuously in writing the charges for every funeral offered; to identify clearly the services, facilities, equipment and merchandise included in such quotations; and to follow a policy of reasonable adjustment when less than the quoted offering is utilized.

5. To furnish to each family at the time funeral arrangements are made, a written memorandum of charges and to make no additional charge without the approval of the purchaser.

6. To make no representation, written or oral, which may be false or misleading, and to apply a standard of total honesty in all dealings.

To assure the Code's effectiveness, NSM requires its members to file annual and special reports showing the manner and form of their compliance with all of its provisions.

In April of 1974, prior to the commencement of the Commission's rulemaking proceeding, NSM joined the National Funeral Directors Association in petitioning the Commission to initiate a voluntary Guides proceeding and to give

consideration to a detailed set of Guides filed on April 18, 1974. To our knowledge, no action was ever taken on this petition.

More than a year and a half later, on December 19, 1975, NSM moved the Commission to convert the trade regulation rule proceeding to a Guides proceeding. Following an oral hearing on March 12, 1976, before the Commission, this request by NSM also was denied.

About the same time that NSM put its Code of Good Funeral Practice into effect, the National Funeral Directors Association, to which about two-thirds of the nation's funeral directors belong, also promulgated a code of ethics. Thus, it is simply untrue that the industry has not responded with any form of self-regulation.

In the case of the funeral industry, the Commission has not followed, or even attempted to follow, its policy professed to the Senate Subcommittee that, where an industry responds by self-regulation, the Commission will restrain its hand and not regulate.

CONTINENTAL ASSOCIATION OF FUNERAL AND MEMORIAL SOCIETIES, INC.

DECEMBER, 1979

Dear Memorial Society President,

The House of Representatives voted to prevent the FTC from enacting its trade rule on funeral industry practices. As most of you will have learned already through your local press, 233 members voted for an amendment introduced by Rep. Russo of Illinois to stop all FTC action on funerals. Only 147 Representatives voted against Russo and for a funeral rule.

The debate on the House floor before the vote was as disheartening as the actual vote. "The government is trying to regulate us from the womb to the tomb" one Representative said to general laughter. That sentiment carried the day. While the debate was full of inaccuracies and misrepresentations about the funeral rule and the rulemaking proceeding, the vote had already been lost earlier that day because of behind the scenes lobbying.

We know from frequent reports we heard from Congressional offices, and from letters and calls from many of you, how very hard you worked to help save the rule in the House. CAFMS is VERY GRATEFUL to all of you for your strong response on behalf of the funeral rule when we asked for your assistance last summer and fall. Although we lost, we can be quite proud of how strenuously memorial societies worked to help other consumers. We lost to forces beyond our control, but we earned a good deal of name recognition, virtually all of its positive, for memorial societies, and memorial societies now have many more friends to help us on future issues. And as the end of this letter describes, there is still reason for some hope in the Senate and in the House-Senate Conference Committee.

I've asked Betty Clammer and Erika Landberg, who worked very hard to salvage the rule this fall, to give you a more complete analysis of what happened:

ANALYSIS OF THE HOUSE VOTE

Most of the Representatives voting with Russo were voting against the FTC and against government regulations in general, not against the funeral rule itself. Russo caricatured the funeral rule as the work of zealous Washington bureaucrats and most Representatives felt that a vote against "government regulation" would look better to people back home than would a vote for consumers.

Two other factors account for the size of the House vote. The first is Russo himself. He has been marked as a young, up-and-coming Congressman by the House leadership, mainly because he is energetic, persistent and agreeable. Tip O'Neill personally worked on Russo's behalf all day before the vote and may have turned as many as 30 pro-funeral rule votes into Russo votes. Russo had also impressed his colleagues with his persistence in fighting the funeral rule for several years. In contrast, the proponents of the funeral rule had many supporters, but no one Representative had made it their personal issue for a couple of years.

The final factor in the vote was that Representatives were convinced that funeral directors would remember how they voted and hold a pro-funeral rule vote against them at election time. The intensity of the funeral directors' lobbying at the local and state level was so great that Representatives feared voting against them. Representatives felt that consumer groups have lots of issues and that a "right" vote on some other consumer issue would counteract any disapproval for their Russo vote. (The upcoming issue of the CAFMS BULLETIN lists every Representative's vote. We urge you to write to your Representative either to thank them for voting for the rule, or to hold them accountable for their Russo vote. It is especially important to write to those that you contacted before the vote.)

ON THE POSITIVE SIDE

CAFMS in Washington heard from several sources on Capitol Hill that the memorial society effort—ours and yours—was well recognized and appreciated. Memorial society members were complimented for their reasonable, earnest and honest approach to the issue. The very civility of memorial society efforts impressed people and will help the next time you and/or we need to contact legislators.

Finally, memorial societies have made many new friends and strengthened the commitment of old friends to the memorial society idea. CAFMS formed a coalition last summer to help save the funeral rule. The coalition, which grew to include every senior citizen group, major unions, and a wide variety of consumer a tremendous help to us. CAFMS was able to use the Watts line of AARP for its long distance phone calls. Organizations such as Common Cause and AFL-CIO sent letters to all Representatives and made innumerable personal visits to legislators and staff urging support for the rule. Consumer Federation of America held a press conference of religious leaders supporting the funeral rule at which the National Council of Churches made public its support for the rule. Esther Peterson lobbied for the White House and Ralph Nader's Congress Watch was also active. CAFMS effectiveness in working with these groups was greatly enhanced by your efforts locally and by the response they generated in Washington.

CAPMS letter continued

OUTLOOK IN THE SENATE

The Senate's FTC Authorization Bill (now S. 1991) has been entirely rewritten by Sen. Wendell Ford (D-Kentucky), Chairman of the Consumer Subcommittee of the Commerce Committee. The new bill restricts the FTC severely in several key areas (and kills FTC investigations into use cars and children's TV advertising) but it does not mention the funeral rule.

As of today, Russo has no counterpart in the Senate to push for an anti-funeral rule. If some Senator does offer an amendment we will contact you for lobbying assistance, but it is our hope that the Senate will vote on S.1991 before Christmas, and that there will be no floor vote on funerals.

HOUSE-SENATE CONFERENCE COMMITTEE

If the Senate Bill does not mention funerals, the House-Senate Conference Committee will decide whether to follow the House vote on Russo or the Senate decision (really non-decision) to remain silent on the funeral rule. Many hard bargains and alot of horse trading will go on in the Conference meetings since the Senate and House Bills are so dissimilar on many issues, including funerals. There will be approximately 5 Representatives and 5 Senators on the Conference Committee. When we learn who they are we will contact the societies in those states and districts to help encourage the conferees to work for the funeral rule in the meetings.

Once again, we appreciate all of your efforts. Sincerely,

Becky Colon

Betty Ciemmer

Erika Landberg

HOW TO HANDLE GRIEF

"TO REMEMBER ME..."

Do you get uncomfortable trying to comfort a friend who is grieving for a loved one?

If so, don't despair. There are some steps you can take to help others make it through their grief, says Dr. J. William Morden, research director of Harvard Medical School's Omega Project. Morden, a psychologist who has counseled hundreds of patients on death and grief over the last 10 years suggests:

• Don't use platitudes like "Life is for the living," or "Be brave." It's better to say nothing.

• Be available on a regular basis. Don't go to the funeral and then disappear. Keep the contact up, especially around the first anniversary of the death, or the holidays.

• Encourage the survivor to talk about the deceased. Talking about the person who's gone facilitates the awareness that it happened, which is an important first step.

• Allow the person time for grieving. Let him indulge his feeling of sadness, guilt, anger, or anxiety to get them out of his system. This may take weeks or months, and even a year of two isn't too long for some.

• Encourage the survivor to form new relationships. Often people need a friendly push to take this critical step.

If you can help someone through his grief, says Morden you might also help yourself.

The day will come when my body will lie upon a white sheet neatly tucked under four corners of a mattress located in a hospital busily occupied with the living and the dying. At a certain moment a doctor will determine that my brain has ceased to function and that for all intents and purposes, my life has stopped.

When that happens, do not attempt to instill artificial life into my body by the use of a machine. And don't call this my deathbed. Let it be called the Bed of Life, and let my body be taken from it to help others lead fuller lives.

Give my sight to the man who has never seen a sunrise, a baby's face or love in the eyes of a woman. Give my heart to a person whose own heart has caused nothing but endless days of pain. Give my blood to the teenager who was pulled from the wreckage of his car, so that he might live to see his grandchildren play. Give my kidneys to one who depends on a machine to exist from week to week. Take my bones, every muscle, every fiber and nerve in my body and find a way to make a crippled child walk.

Explore every corner of my brain. Take my cells, if necessary, and let them grow so that, someday, a speechless boy will shout at the crack of a bat and a deaf girl will hear the sound of rain against her window.

Burn what is left of me and scatter the ashes to the winds to help the flowers grow.

If you must bury something, let it be my faults, my weaknesses and all prejudice against my fellow man.

Give my sins to the devil. Give my soul to God.

If, by chance, you wish to remember me, do it with a kind deed or word to someone who needs you. If you do all I have asked, I will live forever.

THE ANNUAL MEETING

A large turnout enables us to ask an especially good speaker. And you may get a chance to ask questions and/or share your ideas and suggestions with all of us.

Please don't forget - MARCH 8, 1980.

2:30 P.M. - 4:00 P.M. (PLACE TO BE ANNOUNCED).

NSM VIRGINIA PRICE SURVEYSurvey of Effects on Funeral Prices in
Virginia of State Statute Patterned on
Proposed FTC Trade Regulation Rule

The following data were compiled by the NSM headquarters staff from a survey of all NSM funeral home members in Virginia using unit pricing before the effective date of the state statute requiring price itemization of funeral merchandise and services.

The survey shows that, after October 1, 1979, the effective date of the new statute, the average lowest-priced funeral increased by \$443, or 54 percent, and the average price increase for the four lowest-priced funerals was \$338, or 34 percent. The pricing requirements of the Virginia statute are patterned on the proposed FTC trade regulation rule.

<u>Funeral Firm</u>	<u>Four Lowest- Priced Funerals Under Unit Pricing</u>	<u>Four Lowest- Priced Funerals Under Itemization</u>	<u>Dollar Increase</u>	<u>Percentage Increase</u>
No. 1	\$1050	\$1451	\$401	38%
	1486	1486	0	0
	1626	1626	0	0
	1776	1776	0	0
No. 2	595	1096	501	84
	865	1191	326	38
	1050	1249	199	19
	1180	1439	259	22
No. 3	985	1483	498	51
	1105	1528	423	38
	1340	1590	250	19
	1374	1608	234	17
No. 4	935	1385	450	48
	1080	1575	495	46
	1345	1635	290	22
	1475	1740	265	18

Funeral Firm	Four Lowest- Priced Funerals Under Unit Pricing	Four Lowest- Priced Funerals Under Itemization	Dollar Increase	Percentage Increase
No. 5	\$ 695	\$ 895	\$ 200	29%
	795	995	200	25
	895	1095	200	22
	995	1195	200	20
No. 6	750	1431	681	91
	950	1467	517	54
	1395	1680	285	20
	1675	1695	20	1
No. 7	975	1476	501	51
	1255	1585	330	26
	1465	1739	294	20
	1675	1829	154	9
No. 8	850	1850	1000	118
	895	1925	1030	115
	1050	2017	967	92
	1275	2140	865	68
No. 9	888	1158	270	30
	998	1300	302	30
	1140	1410	270	24
	1250	1505	255	20
No. 10	795	1250	455	57
	995	1300	305	31
	1295	1710	415	32
	1545	1800	255	17
No. 11	793	944	151	19
	875	1095	220	25
	944	1150	206	22
	1095	1182	87	8
No. 12	795	998	203	26
	995	1269	274	28
	1050	1309	259	25
	1150	1390	240	21

NSM TEXAS PRICE SURVEYSurvey of Effects on Funeral Prices in
Texas of State Statute Patterned on
Proposed FTC Trade Regulation Rule

The following data were compiled by the NSM headquarters staff from a survey of all NSM funeral home members in Texas using unit pricing before the effective date of the state statute requiring price itemization of funeral merchandise and services.

The survey shows that, after September 1, 1979, the effective date of the new statute, the average lowest-priced funeral increased by \$287, or 41 percent, and the average price increase for the four lowest-priced funerals was \$202, or 23 percent. The pricing requirements of the Texas statute are patterned on the proposed FTC trade regulation rule.

<u>Funeral Firm</u>	<u>Four Lowest- Priced Funerals Under Unit Pricing</u>	<u>Four Lowest- Priced Funerals Under Itemization</u>	<u>Dollar Increase</u>	<u>Percentage Increase</u>
No. 1	\$ 350	\$ 806	\$456	130%
	595	840	245	42
	698	861	163	23
	895	904	9	1
No. 2	575	970	395	69
	908	1045	137	15
	1135	1155	20	2
	1294	1294	0	0
No. 3	997	1255	258	26
	1193	1295	102	9
	1389	1389	0	0
	1487	1487	0	0
No. 4	998	1097	99	10
	1169	1198	29	2
	1195	1240	45	4
	1324	1419	95	7

Funeral Firm	Four Lowest- Priced Funerals Under Unit Pricing	Four Lowest- Priced Funerals Under Itemization	Dollar Increase	Percentage Increase
No. 5	\$ 699	\$1028	\$329	47%
	957	1087	130	14
	1087	1160	73	7
	1100	1256	156	14
No. 6	763	1022	259	34
	850	1094	244	29
	915	1202	287	31
	990	1278	288	29
No. 7	695	1028	333	48
	895	1193	298	33
	945	1291	346	37
	1095	1541	446	41
No. 8	890	1150	260	29
	1045	1275	230	22
	1175	1440	265	23
	1330	1490	160	12
No. 9	895	1028	133	15
	995	1193	198	20
	1095	1291	196	18
	1295	1389	94	7
No. 10	897	1060	163	18
	970	1175	205	21
	1098	1275	177	16
	1270	1370	100	8
No. 11	796	1033	237	30
	889	1072	183	21
	991	1093	102	10
	998	1092	94	9
No. 12	695	1090	395	57
	1156	1236	80	7
	1348	1388	40	3
	1440	1520	80	6
No. 13	1048	1220	172	16
	1205	1395	190	16
	1387	1505	118	9
	1479	1671	192	13

Funeral Firm	Four Lowest- Priced Funerals Under Unit Pricing	Four Lowest- Priced Funerals Under Itemization	Dollar Increase	Percentage Increase
No. 14	\$ 895	\$1064	\$169	19%
	1125	1245	120	11
	1395	1490	95	7
	1495	1575	80	5
No. 15	792	1151	359	45
	1047	1221	174	17
	1095	1288	193	18
	1255	1371	116	9
No. 16	995	1355	360	36
	1075	1395	320	30
	1195	1475	280	23
	1295	1525	230	18
No. 17	895	1195	300	34
	995	1295	300	30
	1095	1395	300	27
	1195	1495	300	25
No. 18	747	897	150	20
	947	1047	100	11
	1087	1287	200	18
	1367	1487	120	9
No. 19	865	1043	178	21
	950	1143	193	20
	1050	1243	193	18
	1195	1358	163	14
No. 20	995	995	0	0
	1195	1335	140	12
	1295	1427	132	10
	1295	1456	161	12
No. 21	850	1478	628	74
	1350	1506	156	12
	1465	1665	200	14
	1598	1745	147	9

Funeral Firm	Four Lowest- Priced Funerals Under Unit Pricing	Four Lowest- Priced Funerals Under Itemization	Dollar Increase	Percentage Increase
No. 22	\$ 695	\$1310	\$615	88%
	895	1395	500	56
	995	1465	470	47
	1095	1495	400	37
No. 23	475	833	358	75
	695	865	170	24
	695	865	170	24
	785	905	120	15

NSM CODE OF GOOD FUNERAL PRACTICE

As funeral directors, our calling imposes upon us special responsibilities to those we serve and to the public at large. Chief among them is the obligation to inform the public so that everyone can make knowledgeable decisions about funerals and funeral directors.

In acceptance of our responsibilities, and as a condition of our membership in National Selected Morticians, we affirm the following standards of good funeral practice and hereby pledge:

1. To provide the public with information about funerals, including prices, and about the functions, services and responsibilities of funeral directors.
2. To afford a continuing opportunity to all persons to discuss or arrange funerals in advance.
3. To make funerals available in as wide a range of price categories as necessary to meet the need of all segments of the community, and affirmatively to extend to everyone the right of inspecting and freely considering all of them.
4. To quote conspicuously in writing the charges for every funeral offered; to identify clearly the services, facilities, equipment and merchandise included in such quotations; and to follow a policy of reasonable adjustment when less than the quoted offering is utilized.
5. To furnish to each family at the time funeral arrangements are made, a written memorandum of charges and to make no additional charge without the approval of the purchaser.
6. To make no representation, written or oral, which may be false or misleading, and to apply a standard of total honesty in all dealings.
7. To respect all faiths, creeds and customs, and to give full effect to the role of the clergy.
8. To maintain a qualified and competent staff, complete facilities and suitable equipment required for comprehensive funeral service.
9. To assure those we serve the right of personal choice and decision in making funeral arrangements.
10. To be responsive to the needs of the poor, serving them within their means.

We pledge to conduct ourselves in every way and at all times in such a manner as to deserve the public trust, and to place a copy of this Code of Good Funeral Practice in the possession of a representative of all parties with whom we arrange funerals.

EXHIBIT E

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

OFFICE OF PUBLIC INFORMATION

FOR YOUR INFORMATION

FACT SHEET

STATE LEGISLATION TO COMBAT UNFAIR TRADE PRACTICES

Revised July, 1977

Forty-nine states and the District of Columbia have enacted laws more or less like the Federal Trade Commission Act to prevent deceptive and unfair trade practices.

This revision is to reflect enactment of such a law in Tennessee and the strengthening of the Virginia law.

In Alabama, which doesn't have such a law, a consumer complaint clearinghouse has been established to facilitate the taking of action under existing laws and possibly recommend new legislation.

The Federal Trade Commission's draft of *Unfair Trade Practices and Consumer Protection Law*, published in 1970 *Suggested State Legislation* by the Council of State Governments, contains three alternative forms of coverage:

- **ALTERNATE FORM NO. 1** utilizes broad language from Section 5 of the Federal Trade Commission Act to prevent "unfair methods of competition and unfair or deceptive acts or practices" in trade or commerce.

14 states: Alaska, Connecticut, Florida, Hawaii, Illinois, Louisiana, Maine, Massachusetts, Montana, North Carolina, South Carolina, Vermont, Washington, and Wisconsin.

- **ALTERNATE FORM NO. 2** reaches all forms of fraudulent, deceptive, and sometimes unfair acts and practices in trade or commerce.

14 states: Arizona, Arkansas, California, Delaware, Iowa, Kentucky, Maryland, Minnesota, Missouri, New Jersey, New York, North Dakota, Tennessee, and West Virginia.

- **ALTERNATE FORM NO. 3** itemizes deceptive practices, usually with a "catch-all" clause to reach other forms of deception.

15 states: Colorado, Georgia, Idaho, Indiana, Mississippi, Nevada, New Hampshire, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Virginia, and Wyoming.

The *Uniform Consumer Sales Practices Act*, developed by the National Conference of Commissioners on Uniform State Laws, is similar in deceptive practice coverage to Alternate Form No. 3 above, but extends also to unconscionable consumer sales practices. It, or a variation, has been adopted in 7 jurisdictions: District of Columbia, Kansas, Michigan, Nebraska, New Mexico, Ohio, and Utah.

(over)

The 50 laws mentioned above typically contain authorization for the administering or enforcement official to conduct investigations through use of subpoenas, to issue cease and desist orders, or obtain court injunctions to halt the use of anticompetitive, unconscionable, deceptive, or unfair trade practices.

⁴⁸ Restitution may be obtained by the administering or enforcement official on behalf of aggrieved consumers in ³² jurisdictions: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin.

³⁰ Civil Penalties for an initial violation may be assessed in ³² jurisdictions: Alaska, Arizona, California, Connecticut, District of Columbia, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Vermont, Virginia, Washington, and Wisconsin.

¹⁵ Class Actions by consumers are authorized in ¹⁵ jurisdictions: Alaska, California, Connecticut, Indiana, Kansas, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, Ohio, Oregon, Rhode Island, Texas, Utah, and Wyoming.

Private Actions by consumers, sometimes including minimum recovery of \$100 or \$200, sometimes including double, treble, or punitive damages, and usually including costs and attorney fees, are authorized in ⁴² jurisdictions: Alaska, Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

³² Rules and Regulations are authorized to be issued for implementing statutes similar to the FTC Act in ³² jurisdictions: Alaska, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, Vermont, West Virginia, and Wisconsin.

For further information, or to report changes or corrections in above data, contact:

Mr. Gale P. Gotschall
Counsel for Federal-State Cooperation
Federal Trade Commission
Washington, D.C. 20580
Telephone (202) 523-3543

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$200

POSTAGE AND FEES PAID
U. S. FEDERAL TRADE COMMISSION
FIRST CLASS



EXHIBIT F

STATE GOVERNMENT CONSUMER OFFICES

ALABAMA. State Offices: Governor's Office of Consumer Protection, 138 Adams Ave., Montgomery, AL, 36130, 205/832-5936, 1-800-392-5658; Consumer Services Coordinator, Office of Attorney General, 669 S. Lawrence St., Montgomery, AL, 36107, 205/832-6820.

ALASKA. State Offices: Chief Consumer Protection Section, Office of Attorney General, 360 "K" St., Anchorage, AK, 99501, 907/279-1567 (Branch Offices: Pouch K, State Capitol, Juneau, AK, 99801, 907/586-5931; 604 Barnette, Box 1309, Fairbanks, AK, 99701, 907/452-1567).

ARIZONA. State Offices: Economic Protection Division, Department of Law, 159 State Capitol Building, Phoenix, AZ, 85007, 602/271-5763.

ARKANSAS. State Offices: Consumer Protection Division, Office of Attorney General, Justice Building, Little Rock, AR, 72201, 501/371-2341, 1-800-482-8982; Consumer Service Division, Department of Insurance, University Tower Building, Little Rock, AR, 72204, 501/371-1325.

CALIFORNIA. State Offices: Department of Consumer Affairs, 1020 N St., Sacramento, CA, 95814, 916/445-1254, 1-800-952-2880 (auto repair complaints only) (Branch Offices: 107 South Broadway, Rm. 8020, Los Angeles, CA, 90012, 213/620-2003; 30 Van Ness Avenue, Rm. 2100, San Francisco, CA, 94102, 415/557-2046); Environment/Consumer Protection Section, Office of Attorney General, 350 McAllister St., San Francisco, CA, 94102, 800/952-5225 (consumer comps. from out of state); Consumer Affairs Division, Department of Insurance, 600 S. Commonwealth Ave., Los Angeles, CA, 90005, 213/620-4639 (insurance only) (Branch Office: 1407 Market St., San Francisco, CA 94103, 415/557-3646).

COLORADO. State Offices: Office of Consumer Affairs, Attorney General, 104 State Capitol, Denver, CO, 80203, 303/897-2542; Consumer & Food Specialist, Dept. of Agriculture, 1525 Sherman St., Rm. 422, Denver, CO, 80203, 303/892-3561.

CONNECTICUT. State Offices: Dept. of Consumer Protection, State Office Building, Hartford, CT, 06115, 203/566-4999, 800-842-2649; Assistant Attorney General for Consumer Protection, Rm. 177 State Office Bldg., Hartford, CT, 06115, 203/566-3035; Office of Consumer Counsel, Public Utility Commission, 165 Capitol Ave., State Office Bldg., Hartford, CT, 06115, 203/566-7287.

DELAWARE. State Offices: Consumer Affairs Division, Dept. of Community Affairs, 200 W. Ninth St., 6th Floor, Wilmington, DE, 19801, 302/571-3250 (Branch Offices: New Castle County: 571-3250; Kent County: 678-4000; Sussex County: 856-2571); Consumer Protection Division, Dept. of Justice, Public Bldg., Wilmington, DE, 19801, 302/571-2524.

DISTRICT OF COLUMBIA. Office of Consumer Affairs, 1407 "L" St., N.W., Washington, D.C., 20005, 202/629-2617; Office of the People's Counsel of the District of Columbia, 1625 Eye St., N.W., Washington, D.C., 20006, 202/727-3071.

FLORIDA. State Offices: Consumer Prot. and Fair Trade Practices Bureau, Dept. of Legal Affairs, State Capitol, Tallahassee, FL, 32304, 904/488-4481 (Branch Offices: Sunset Executive Center, Suite 75, 8585 Sunset Dr., Miami, FL, 33143, 305/279-8700; 419 Stoval Prof. Bldg., Tampa, FL, 33602, 813/223-2561); Division of Consumer Services, Dept. of Agriculture, 107 Mayo Bldg., Tallahassee, FL, 32304, 904/488-2221, 1-800-342-2176 (Fla. only); Consumer Protection, Office of the Comptroller, State Capitol, Tallahassee, FL, 32304, 904/488-5275 or 488-8830 (Branch Offices: 1515 N.W. 7th St., Rm. 210, Miami, FL, 33125, 305/649-8650; 103 Century Twenty-One Drive, Suite 113, Jacksonville, FL, 32216, 904/724-3752; 807 W. Morse Blvd., Suite 201, Winter Park, FL, 32789, 305/644-4353; Exec. Square Office Park, Suite 113, 402 Rio St., Tampa, FL, 33609, 813/272-2565; 2453 N. Military Trail, W. Palm Beach, FL, 33401, 305/686-

State Government Consumer Offices

FLORIDA. State Offices: Bureau of Consumer Research and Education, Dept. of Insurance, State Capitol, Suite 33, Tallahassee, FL, 32304, 904/488-6084 (Insurance only); Branch Office: Call 904/488-6085 for nearest of 21 service offices; Office of Consumer Affairs, Public Service Commission, 700 S. Adams St., Tallahassee, FL, 32304, 904/488-7238, 1-800-342-3552 (utility complaints only); Office of Public Counsel, Holland Bldg., Rm. 308, Tallahassee, FL, 32304, 904/488-9330 (Litigation only).

GEORGIA. State Offices: Governor's Office of Consumer Affairs, 104 State Capitol, Atlanta, GA, 30334, 404/656-1794, 1-800-292-4980; Assistant Attorney General for Deceptive Practices, 132 State Judicial Bldg., Atlanta, GA, 30334, 404/656-3343; Consumers' Utility Counsel, 310 Rhodes Haverly Bldg., Atlanta, GA, 30303, 404/681-0444. City Offices: Atlanta—Office of Consumer Affairs, City Hall, 121 Memorial Drive, S.W., Atlanta, GA, 30303, 404/658-6704.

HAWAII. State Offices: Director of Consumer Protection, 602 Kamamalu Bldg., Honolulu, HI, 96811, 808/548-2560 (Administration), 808/548-2540 (Complaints).

IDAHO. State Offices: Consumer Protection Division, Office of Attorney General, State Capitol, Rm. 225, Boise, ID, 83720, 208/384-2400.

ILLINOIS. State Offices: Consumer Advocate's Office, Room 2000, 180 N. LaSalle St., Chicago, IL, 60601, 312/793-2734; Consumer Fraud Section, Office of Attorney General, 134 N. LaSalle St., Rm. 204, Chicago, IL, 60602, 312/793-3580 (Branch Offices: 2351 Madison-Project Uplift, Bullwood, IL, 60104; 13051 Greenwood Ave., Blue Island, IL, 60406, 312/597-8984; 50 Ramp Blvd., Buffalo Grove, IL, 60089, 312/537-8984; 1104 N. Ashland Ave., Chicago, IL, 60622, 312/793-3638; 4750 N. Broadway, Rm. 216, Chicago, IL, 60640, 312/769-3742; 7906 S. Cottage Grove, Chicago, IL, 60619, 312/484-2600; 800 Lee St., Des Plaines, IL, 60016; 901 Wellington St., Elk Grove Village, IL, 60007, 312/439-3900; 1703 Orrington, Evanston, IL, 60204, 312/475-6700; 71 N. Ottawa St., Joliet, IL, 60434, 815/727-3371; 1603 North Ave., McHenry, IL, 60050, 815/384-1703; 6300 N. Lincoln Ave., Morton Grove, IL, 60053, 312/967-4100; 217 S. Civic Dr., Schaumburg, IL, 60172, 312/894-7771; 5127 Oakton St., Skokie, IL, 60076, 312/674-2322; 149 S. Genesee, Waukegan, IL, 60085, 312/244-4900); Consumer Protection Division, Office of Attorney General, 500 South Second St., Springfield, IL, 62706, 217/782-1090 (Branch Offices: Chamber of Commerce Bldg., 112 E. Broadway, Alton, IL, 62002, 612/462-9201; 103 S. Washington, Suite 12, Carbondale, IL, 62901, 618/549-3369; 820 Martin Luther King Dr., E. St. Louis, IL, 62201, 618/874-2238; 500 Main St., Peoria, IL, 61602, 309/773-3100; 208—18th St., Rock Island, IL, 61201, 309/796-3303; 401 W. State St., Rockford, IL, 61101, 815/965-8635; 123 1/2 N. Garrard St., Rantoul, IL, 61866, 217/893-1401); Consumer Market Branch, Dept. of Insurance, 215 E. Monroe, Springfield, IL, 62767, 217/782-4515 (Insurance only).

INDIANA. State Offices: Consumer Protection Division, Office of Attorney General, 215 State House, Indianapolis, IN, 46204, 317/633-6496 or 6276, 1-800-392-5516; Division of Consumer Credit, Dept. of Financial Institutions, 1024 Indiana State Office Bldg., Indianapolis, IN, 46204, 317/633-6297 (Credit only); Consumer Services Division, Dept. of Insurance, State Office Bldg., Rm. 509, Indianapolis, IN, 46204, 317/633-6338 (Insurance only); Public Counselor, 807 State Office Bldg., Indianapolis, IN, 46204, 317/633-4859 (Utilities only).

IOWA. State Offices: Consumer Protection Division, Office of Attorney General, 1209 E. Court, Des Moines, IA, 50319, 515/281-3926.

KANSAS. State Offices: Consumer Protection Division, Office of Attorney General, State Capitol, Topeka, KS, 66612, 913/296-3751; State Insurance Dept., State Office Bldg., Rm. 129-S, Topeka, KS, 66612, 913/296-3071, 1-800-432-2484 (Insurance only).

KENTUCKY. State Offices: Consumer Protection Division, Office of Attorney General, State Capitol, Rm. 34, Frankfort, KY, 40601, 502/564-6607, 1-800-372-2960.

State Government Consumer Offices

LOUISIANA. State Offices: Governor's Office of Consumer Protection, 1805 Wooddale Blvd., 1210, Baton Rouge, LA, 70804, 804/389-7483, 800-272-9966; Consumer Protection-Commercial Fraud, Office of Attorney General, 1805 Wooddale Blvd., 1208, Baton Rouge, LA, 70806, 504/389-7228 (Branch Office: 234 Loyola Ave., 7th Floor, New Orleans, LA, 70112, 504/527-3371); Bureau of Marketing, Dept. of Agriculture, P.O. Box 44302, Baton Rouge, LA, 70804, 504/389-2111.

MAINE. State Offices: Division of Consumer Fraud, Office of Attorney General, State House, Augusta, ME, 04430, 207/269-3716; Bureau of Consumer Protection-Consumer Credit, 51 Chapel St., Augusta, ME, 04330, 207/269-3731 (Credit only); Bureau of Insurance, Dept. of Business Regulation, State Office Annex, Augusta, ME, 04330, 207/269-3141 (Insurance only).

MARYLAND. State Offices: Consumer Protection Division, Office of Attorney General, One South Calvert St., Baltimore, MD, 21202, 301/383-3713 (Branch Offices: 5112 Berwyn Rd., 2nd Floor, College Park, MD, 20740, 301/474-3500; 138 E. Antietam St., Hagerstown, MD, 21740, 301/791-1150); Dealer Licensing & Consumer Services, Motor Vehicle Administration, 6601 Ritchie Highway, N.E., Glen Burnie, MD, 21061, 301/786-7420; Peoples Counsel, Public Service Commission, 301 W. Preston St., Baltimore, MD, 21201, 301/383-2375; Commissioner of Consumer Credit, One South Calvert St., Room 601, Baltimore, MD, 21202.

MASSACHUSETTS. State Offices: Office of Consumer Affairs, John W. McCormack Bldg., Boston, MA, 02108, 617/727-8000; Consumer Protection Division, Dept. of Attorney General, State House, Rm. 167, Boston, MA, 02133, 617/727-8406 (Branch Office: 235 Chestnut St., Springfield, MA, 01103, 413/783-1951); Mass. Consumers' Council, 100 Cambridge St., Rm. 2109, Boston, MA, 02202, 617/727-2605/2606.

MICHIGAN. State Offices: Consumer Protection/Antitrust Division, Office of Attorney General, 670 Law Bldg., Lansing, MI, 48913, 517/373-1140, 1-800-292-2431 (land sales only); Michigan Consumer Council, 414 Hollister Bldg., Lansing, MI, 48933, 517/373-0947; Consumer Services Division, Insurance Bureau, 111 N. Hawser St., Lansing, MI, 48913, 517/373-0220 (Insurance only).

MINNESOTA. State Offices: Consumer Protection Division, Office of Attorney General, 102 State Capitol, St. Paul, MN, 55155, 612/296-3353; Office of Consumer Services, Dept. of Commerce, Metro Square Bldg., 5th Fl., St. Paul, MN, 55101, 612/296-4512 (Branch Office: 332 W. Superior Rd., Duluth, MN, 55802, 218/723-4891); Consumer Advocacy Program, 5th Floor, Metro Square Bldg., St. Paul, MN, 55101, 612/296-2488 (Insurance only).

MISSISSIPPI. State Offices: Consumer Protection Division, Office of Attorney General, Justice Bldg., Box 220, Jackson, MS, 39205, 601/354-7130; Consumer Protection Division, Dept. of Agriculture and Commerce, P.O. Box 1609, Jackson, MS, 39205, 601/354-6586.

MISSOURI. State Offices: Consumer Protection Division, Office of Attorney General, Supreme Court Bldg., Jefferson City, MO, 65101, 314/731-3321 (Branch Offices: 703 Olive St., Suite 1323, St. Louis, MO, 63101, 314/241-2211; 615 E. 13th St., Kansas City, MO, 64106, 816/274-6086); Dept. of Consumer Affairs, Regulation and Licensing, P.O. Box 1157, Jefferson City, MO, 65101, 314/751-4996; Division of Insurance, 515 E. High St., Box 690, Jefferson City, MO, 65101, 314/751-4996; Division of Insurance, 515 E. High St., Box 690, Jefferson City, MO, 65101, 314/751-4126 (Branch Offices: 615 E. 13th St., Kansas City, MO, 64106, 816/274-6381; 225 S. Maramec, St. Louis, MO, 63105, 314/663-7735).

MONTANA. State Offices: Consumer Affairs Division, Dept. of Business Regulation, 805 N. Main St., Helena, MT, 59601, 406/449-3163; Montana Consumer Council, 330 Fuller Ave., Helena, MT, 59601, 406/449-2771 or 2772 (Utility and transportation only).

NEBRASKA. State Offices: Dept. of Justice, State Capitol, 10th Floor, Lincoln, NE, 68509, 402/471-2602; Consumer Consultant, Dept. of Agriculture, P.O. Box 94844, Lincoln, NE, 68509, 402/471-2341.

State Government Consumer Offices

NEVADA. State Offices: Consumer Affairs Division, Office of Attorney General, 2501 E. Sahara Ave., 3rd Fl., Las Vegas, NV, 89104, 702/385-0344; Consumer Affairs Division, Dept. of Commerce, 2501 E. Sahara Ave., 3rd Floor, Las Vegas, NV, 89104, 702/385-0344, 800-992-0900 (Branch Office: 201 S. Fall St., Carson City, NV, 89710, 702/885-4340); Division of Consumer Relations, Public Service Commission, 505 E. King St., Carson City, NV, 89710, 702/885-4180.

NEW HAMPSHIRE. State Offices: Consumer Protection Division, Office of Attorney General, Statehouse Annex, Concord, NH, 03301, 603/271-3641.

NEW JERSEY. State Offices: Division of Consumer Affairs, Dept. of Law & Public Safety, 1100 Raymond Blvd., Rm. 504, Newark, NJ, 07201, 201/648-4010; Dept. of Public Advocate, P.O. Box 141, Trenton, NJ, 08625, 609/292-7087, 800-792-8600 (State agency action only); Dir. of Consumer Services, Dept. of Insurance, 201 E. State St., Trenton, NJ, 08625, 609/292-5363.

NEW MEXICO. State Offices: Consumer Protection Division, Office of Attorney General, P.O. Box 2246, Santa Fe, NM, 87501, 505/827-2844 or 5237.

NEW YORK. State Offices: Consumer Protection Board, 99 Washington Ave., Rm. 1000, Albany, NY, 12210, 518/474-8583 (Branch Office: Two World Trade Center, Rm. 8225, New York, NY, 10047, 212/488-5666); Consumer Frauds & Protection Bureau, Office of Attorney General, Two World Trade Center, New York, NY, 10047, 212/488-7530; Consumer Frauds & Protection Bureau, Office of Attorney General, State Capitol, Albany, NY, 12224, 518/474-8686 (Branch Offices: 403 Metcalf Bldg., Auburn, NY, 13021, 315/253-9765; 19 Chanango St., Binghamton, NY, 13901, 607/773-7823; 65 Court St., Buffalo, NY, 14202, 716/842-4385; 48 Cornelia St., Plattsburgh, NY, 12901, 518/561-1980; 65 Broad St., Rochester, NY, 14614, 714/454-4540; 333 E. Washington St., Syracuse, NY, 13202, 315/473-8439, ext. 216; 2 Catharine St., Poughkeepsie, NY, 14301, 914/452-7760; 207 Genesee St., Box 528, Utica, NY, 13501, 315/797-6120; 317 Washington St., Watertown, NY, 13001, 315/782-0100); Consumer Complaint Bureau, State Insurance Dept., Two World Trade Center, New York, NY, 10047, 212/488-9005 (Insurance only) (Branch Office: State Insurance Dept., Albany, NY, 12210, 518/474-4556).

NORTH CAROLINA. State Offices: Consumer Protection Division, Office of Attorney General, Justice Bldg., Raleigh, NC, 27602, 919/829-7741, 1-800-662-7925; Special Assistant for Consumer Affairs, Dept. of Insurance, County Courthouse, Raleigh, NC, 27611, 919/829-2032, 1-800-662-7975 (Insurance only); Office of Consumer Services, Dept. of Agriculture, P.O. Box 27647, Raleigh, NC, 27611, 919/829-7125.

NORTH DAKOTA. State Offices: Consumer Fraud Division, Office of Attorney General, State Capitol, Bismarck, ND, 58501, 701/224-2210; Consumer Affairs Office, Bank of North Dakota Bldg., Bismarck, ND, 58505, 701/224-2485; Claims Division, N.D. Insurance Dept., Capitol Bldg., Bismarck, ND, 58505, 701/224-2440 or 2451 (Insurance only).

OHIO. State Offices: Consumer Frauds, Office of Attorney General, State Office Tower, Suite 1541, Columbus, OH, 43215, 614/466-8831; Consumer Protection Division, Dept. of Commerce, Columbus, OH, 43215, 614/466-8760, 800-282-1960 (except real estate and insurance).

OKLAHOMA. State Offices: Dept. of Consumer Affairs, Jim Thorpe Building, Rm. 460, Oklahoma City, OK, 73105, 405/521-3653; Office of Attorney General, State Capitol Bldg., Rm. 112, Oklahoma City, OK, 73105, 405/521-3921.

OREGON. State Offices: Consumer Protection Division, Office of Attorney General, 1133 S.W. Market St., Portland, OR, 97201, 503/229-5522; Consumer Services Division, Dept. of Commerce, Salem, OR, 97310, 503/378-4320; Public Service Supervisor, Insurance Division, 158-12th St., N.E., Salem, OR, 97310, 503/378-4271 (Insurance only); Consumer Information, Public Utility Commission, Public Service Bldg., Salem, OR, 97310, 503/378-6600 (Utilities only); Dept. of Agriculture, Agriculture Bldg., Rm. 201, Salem, OR, 97310, 503/378-8298.

State Government Consumer Offices

PENNSYLVANIA. State Offices: Bureau of Consumer Protection, Office of Attorney General, 301 Market St., Harrisburg, PA, 17101, 717/787-9714 (Branch Offices: 133 N. Fifth St., Allentown, PA, 18102, 215/821-0901; 919 State St., Erie, PA, 16501, 814/454-7184; 25 South Third St., Harrisburg, PA, 17101, 717/787-7109; 342-44 N. Broad St., Philadelphia, PA, 19102, 215/238-6475; 300 Liberty Ave., Pittsburgh, PA, 15222, 412/565-5135; 1835 Centre Ave., Pittsburgh, PA, 15219, 412/566-1900, ext. 319; 129 N. Washington Ave., #402, Scranton, PA, 18503, 717/961-4582); Policy Holders Service, Dept. of Insurance, Finance Bldg., Rm. 408, Harrisburg, PA, 17120, 717/797-1131 (Insurance only) (Branch Offices: P.O. Box 6142, Erie, PA, 16512, 814/454-2818; 1400 Spring Garden St., Philadelphia, PA, 19130, 215/238-7240; State Office Bldg., Pittsburgh, PA, 15222, 412/565-5020); Consumer Affairs Coordinator, Dept. of Banking, P.O. Box 2155, Harrisburg, PA, 17120, 717/787-1854; Division of Consumer Affairs, Dept. of Agriculture, 2301 N. Cameron St., Harrisburg, PA, 17120 (Branch Offices: R.D. #4, Meadville, PA, 16335, 814/724-1906; R.D. #1 Linden, PA, 17744; Route 92 South, Tunkhannock, PA, 18657, 717/836-2181; R.D. #1, Evans City, PA, 16033, 412/776-1585; 615 Howard Ave., Altoona, PA, 16601, 814/943-1133; Box 419, Summerdale, PA, 17093, 717/787-3400; 100 W. Main St., Lansdale, PA, 19446, 717/368-3000).

RHODE ISLAND. State Offices: Rhode Island Consumers' Council, 365 Broadway, Providence, RI, 02902, 401/277-2764; Division of Consumer Protection, Dept. of Attorney General, 56 Pine St., Providence, RI 02903, 401/277-3163.

SOUTH CAROLINA. State Offices: Office of Citizens Service, Governor's Office, State House, Columbia, SC, 29211, 803/758-3261; Dept. of Consumer Affairs, 1200 Main, Columbia, SC, 29211, 803/758-2040, 800-922-1594; Consumer Protection, Office of Attorney General, P.O. Box 11549, Columbia, SC, 29211, 803/758-3970; Market Conduct Division, Dept. of Insurance, 2711 Middleburg, Dr., Columbia, SC, 29204, 803/758-2876 (Insurance only).

SOUTH DAKOTA. State Offices: Dept. of Commerce and Consumer Affairs, State Capitol, Pierre, SD, 57509, 605/224-3177 (Branch Office: Courthouse Plaza, Suite 2, Sioux Falls, SD, 57102, 605/339-6691).

TENNESSEE. State Offices: Div. of Consumer Affairs, Dept. of Agriculture, Ellington Agricultural Center, Hogan Rd., Box 40627, Nashville, TN, 37204, 615/741-1461, 800-342-8385; Consumer Protection, Office of Attorney General, Supreme Court Bldg., Rm. 415, Nashville, TN, 37219, 615/741-1671.

TEXAS. State Offices: Consumer Protection Division, Office of Attorney General, P.O. Box 12548, Capitol Station, Austin, TX, 78711, 512/475-3288 (Branch Offices: 4313 N. 10th, McAllen, TX, 78501, 512/682-4547; 2930 Turtle Creek Plaza, Dallas, TX, 75219, 214/742-8944; City-County Bldg., El Paso, TX, 79901, 915/533-3484; 806 Broadway, Lubbock, TX, 79401, 806/747-5238; 100 Dwyer Ave., San Antonio, TX, 78204, 512/224-1007; 369 One Main Plaza, Houston, TX, 77002, 713/228-0701; 201 E. Belknap St., Fort Worth, TX, 76102, 817/334-1780); Office of Consumer Credit, 1011 San Jacinto Blvd., Austin, TX, 78767, 512/475-2111; Consumer Affairs Office, Dept. of Agriculture, 113 San Jacinto, Austin, TX, 78701, 512/475-2154.

UTAH. State Offices: Consumer Protection Division, Office of Attorney General, 236 State Capitol, Salt Lake City, UT, 84114, 801/533-6261; Dept. of Financial Institutions, 10 W. Broadway, Suite 331, Salt Lake City, UT, 84101, 801/533-5461 (consumer credit only); Division of Consumer Affairs, Utah Trade Commission, 330 East Fourth South, Salt Lake City, UT, 84111, 801/533-6441.

VERMONT. State Offices: Consumer Fraud Division, Office of Attorney General, 200 Main St., Burlington, VT, 05401, 802/862-6730, 802/658-4353; Dept. of Banking and Insurance, State Office Bldg., Montpelier, VT, 05602, 802/828-3301 (Insurance only); Consumer Affairs Division, Vermont Public Service Board, 120 State St., Montpelier, VT, 05602, 802/828-2332.

State Government Consumer Offices

VIRGINIA. State Offices: Division of Consumer Counsel, Office of Attorney General, Supreme Court Bldg., Richmond, VA, 23219, 804/786-2042; Office of Consumer Affairs, Dept. of Agriculture and Commerce, 825 E. Broad St., Richmond, VA, 23219, 804/786-2042, 800-552-9963 (regarding state agencies); (Branch Office: 8301 Arlington Blvd., Fairfax, VA, 22030, 703/573-1286); Consumer Services & Marketing, Dept. of Insurance, Blanton Bldg., 6th Floor, Richmond, VA, 23209, 804/770-7691 (insurance only).

WASHINGTON. State Offices: Consumer Protection and Antitrust Division, Office of Attorney General, 710 Second Ave., Seattle, WA, 98104, 206/464-7744, 800-552-0700 (Branch Offices: Temple of Justice, Olympia, WA, 98504, 206/753-6200; 1305 Old Nat'l Bank Bldg., Spokane, WA, 99201, 509/456-3123; 116 South 9th St., Tacoma, WA, 98402, 206/593-2904); Office of Consumer Services, Dept. of Agriculture, 406 General Adminis. Bldg., Olympia, WA, 98504, 206/753-0929; (Branch Offices: 2505 South McClellan, Seattle, WA, 98144, 206/464-6730; North 811 Jefferson St., Rm. 113, Spokane, WA, 99201, 509/456-4057).

WEST VIRGINIA. State Offices: Consumer Protection Division, Office of Attorney General, State Capitol Bldg., Charleston, WV, 25305, 304/348-8986; Consumer Protection Division, Dept. of Labor, 1900 Washington St., East, Charleston, WV, 25305, 304/348-7890 (weights and measures, bedding, upholstery, mobile homes, safety only); Consumer Protection Division, Dept. of Agriculture, State Capitol, Rm. E-111, Charleston, WV, 25305, 304/348-2226.

WISCONSIN. State Offices: Governor's Council for Consumer Affairs, V29E Capitol, Madison, WI, 53702, 608/266-3104; Office of Consumer Prot., Wisconsin Dept. of Justice, State Capitol, Madison, WI, 53702, 608/266-7340, 1-FX 910 (Madison to Milwaukee only); Office of Consumer Prot., Dept. of Justice, State Capitol, Madison, WI, 53702, 608/266-1852 (Branch Office: 819 N. 6th St., Rm. 520, Milwaukee, WI, 53203, 414/224-1867); Bur. of Consumer Prot., Dept. of Agriculture, 801 W. Badger Rd., Madison, WI, 53713, 608/266-7728 (Branch Offices: 801 W. Badger Rd., Madison, WI, 53713, 608/266-7228; 1727 Loring St., Altoona, WI, 54720, 715/836-2846; 1181A Western Ave., Green Bay, WI, 54303, 414/494-4787; 8500 W. Capitol Dr., Milwaukee, WI, 53222, 414/464-8580).

Mr. GORE. Mr. Williams?

TESTIMONY OF LARRY C. WILLIAMS, SR.

Mr. WILLIAMS. Thank you, Mr. Acting Chairman. I don't have that much of a story to tell. David and I have been working on this project for a number of years now through the rulemaking proceedings. Quite generally we discuss positions that we think are reasonable, and we have taken, I think, a reasonable view of the proceedings. We have not been satisfied with some of the due process and fair play aspects of the proceedings but those proceedings have been concluded notwithstanding some things that we think perhaps could have been done with a cleaner eye for due process and fair play.

The one thing that is of some concern to the association which I represent is based on the fact that many are smaller than the statistics you read, 1.1 persons, sometimes they are one-man shops and they use a school teacher afternoons to drive a funeral car, and that sort of thing.

The problem is that most times when we are considering upward pressures on the marketplace, the businessman can clearly see a passthrough provision and he passes it on to the consumer so that any effort by any agency to exert an upward pressure means more money in the pocket of the entrepreneur.

In the case of the black funeral directors most generally there are a few doing very well and who have large volumes in major cities. However, that passthrough provision does not exist.

Therefore, if they are required to itemize each item, we strongly believe it will exert an upward pressure. I have some statements from some funeral directors in New York and New Jersey where they are doing that. They were talking about the fact it does exert that upward pressure.

On the lower end of the whole price mechanism is where a great majority of black people are. They have to have these low-priced funerals. Therefore, if you get down to that itemization you are then getting them closer to a welfare burial than they otherwise would be. That is the serious aspect as we see it on the low end for the very small funeral director who services a large number of persons who are not of great economic means and in many cases impecunious. It will have a serious effect, and that has been a concern of ours from the very beginning.

We have always favored unit pricing, but full disclosure of what components are part of that unit so that if the frills are asked for, or the frills are available, they can take them or have them. If they do not want all of the services that are included in that unit then it is easy to price out that item.

However, one of the serious underlying assumptions that has been in the minds of the staff, and it seems to have permeated the entire proceeding, is that there was some effort to regulate prices, and of course the funeral service industry is not a regulated industry. It is not a public utility. A funeral director is free to charge whatever price he wishes. The play of the marketplace will determine whether or not he stays in business.

Also the marketplace will determine whether his conduct is such that he will have a flourishing business or that he will be out of business. That is one of the most critical things of concern to us.

The second thing with which we disagree is the business of giving price information over the phone. If you take that item separately it does not seem to be very mischievous but lawyers will be lawyers and they will put the fabric of a statute together. When you add the fabric of full disclosure to that then the question arises—does he have to describe the quality of an omega casket? Does he have to tell them the gauge of steel? Does he have to tell them it is a sealer? Does he have to describe this?

If he does, does he get into a problem with the warranty of the manufacturer and therefore get himself into a product liability situation because he has gone beyond the warranty?

It is a sort of dangerous area.

Mr. GORE. If you are puzzled about that I can answer that question now before you proceed further. You would not have to do that under the proposed rule.

Mr. WILLIAMS. It is not clear to us what price information has to be given, how far to go.

The second thing is that if we are trying to ferret out misconduct, and hopefully that is what a disclosure requirement is there for, obviously there is some evidence there has not been candor.

Giving price information over the phone is also a way of luring customers to your business establishment. You can tell them, "Oh,

yes, we have them down to the lowest price. We can get them down to \$250."

They will get down to the funeral home and will ultimately have to pick out merchandise. They get in, and once they are in, if the guy will not be fair with people he will try to push a higher price on them.

In our case, in the case of the black funeral director, most times he is trying to tell them, "You cannot bury mother in this \$1,500 unit because the family does not have the money."

You may have four or five brothers and sisters who come from five different places in the country, and they all gather at the funeral home and they want a beautiful funeral for mama. As soon as that is done and the contract is signed and mama is in the ground they leave, go home, and they leave the funeral director with an accounts receivable. He will never get paid.

It becomes a very critical thing, at least in the black community, that the prices are kept down, persons are counseled to take lower priced funerals than they otherwise would take because the funeral director needs to get paid.

I have seen in the 5 or 6 years I have represented funeral directors a great number of the houses have accounts receivable that are staggering to the imagination, and they feel they have to do this. They will not hire an attorney to sue because they feel they will lose that family. If they lose that family they are destroying their business.

However, those are the two areas which are of some primary concern to us. Of course, I understand the committee was concerned with the procedures that were involved. I guess, being a lawyer, the testing of truth and veracity of the statements and trustworthiness of testimony is just a normal everyday occurrence with me.

The first time I was apprised of the proceedings was in Atlanta, Ga., because my association could not afford to ferry me around the country for weeks' stays at a time.

I got into Atlanta. The leadoff witness was a witness gotter from Magnolia, Ark. He was a former insurance man, a black man, who married the daughter of a funeral director, and he went to the Dallas School of Mortuary Sciences and came back up there.

He testified that this school probably is the most despicable educational institution of higher learning in the mind of man. Of course, there was a modicum of truth to it because, as time went along, my not knowing what the proceedings were, I commenced to cross-examine him.

Thankfully I had a member of NSM from that town who had gathered facts and had them available. However, the witness was destroyed.

Then I was told, after all the cross-examination was over, one of the staff attorneys got up and objected. Of course, it was a little too late.

The hearing officer said, "I will just have to advise you that we cannot have any cross-examination that is not part of the regulatory proceedings." Therefore, we had a vast number of people who came, and they testified all sorts of ways.

When we were in Washington, D.C., we had an individual who came to testify against a local funeral director, who I happen to have known and was present in the room.

At the conclusion of his testimony I went to the staff man and the witness and told them I was prepared to file a libel action against them before the sun went down. They had rehabilitated the witness and destroyed all his prior testimony because he had no personal knowledge of anything he was testifying to.

In the absence of cross-examination, in the absence of an adversary proceeding, the truth or falseness of the testimony, the opportunity for bias and prejudice is always there. Therefore, we have 17,000 pages of transcript where there is no cross-examination and none is under oath.

We have people of varying degrees of moral persuasion who came before the Commission to testify. That leaves a pall over the due process and the fair play aspects of the entire proceeding.

I recognize that the hearing officer tried within the rules to be as fair as he possibly could. Jack Kahn was the hearing officer at the two hearings we had. He attempted as far as he could to do that.

We also had other problems. That was the unilateral selection of witnesses. We could not control that. In unilateral selection of witnesses you may select some of the more relevant testimony. I suspect that happened during the course of the proceedings.

However, aside from those procedural problems, and perhaps some constitutional questions that loom in my mind with respect to that, getting down to the four corners of the proposed rule, I think a considerable number of the rules we have no problem with. They are fair and reasonable for a fair-minded funeral director and you have no problem with those extra layers of where the problems are. There are the reporting problems, upward pressure on a market that cannot stand the upward pressure in a passthrough provision, all this makes it a very tough proposition for the funeral director who has to service poor people. It pushes them over into the public welfare area. Many people always feel there has been a stigma attached to persons buried at public charge. That is basically the position we have taken.

I would like once again to say for the record that we clearly associate ourselves with the remarks of Mr. Murchison on behalf of our group.

Mr. GORE. Thank you very much.

Ms. Whitney?

Ms. WHITNEY. Mr. Williams, you do agree with what Mr. Murchison said in his statement?

Mr. WILLIAMS. Yes.

Ms. WHITNEY. You agree that price itemization will increase prices of the low-priced funerals?

Mr. WILLIAMS. Yes. The skimpy evidence we have, we have not been able to conduct a survey. My client happens to be basically impecunious, so we cannot do that.

Lawyers have to do things pro bono publico sometimes. This is one of my pets.

The evidence that I have from discussions with individual funeral directors in those States requiring itemization indicates that

they are charging higher prices, and this has been around the New York-New Jersey area where the prices are up.

Whether they are able, whether the public is able, to withstand the upward pressure on those prices remains to be seen. I suspect at the lower end it will push them over into the public sector and public burials.

Ms. WHITNEY. Why do you think, Mr. Williams, that the FTC did not approach you as a representative of the black or minority funeral directors association to give you public participation funds for the rulemaking proceeding in the same way they approached other groups?

Mr. WILLIAMS. Sometimes black involvement is an afterthought. I am not suggesting that there might have been an afterthought here because the bulk of this population in the country is non-black.

Mr. Robert Miller, who was then the executive director, and had been for some 40 years, I think, died in January. It was through Mr. Miller's nosing around that he found out that funds were available, funds were being made available for some of the other agencies that participated.

Whether or not the National Funeral Directors and Morticians Association would have qualified under the requirements for funding I do not know. Nevertheless, it was not brought to our attention. As a matter of fact, in some subsequent testimony before Senator Laxalt's committee when he was considering the Commission's request for additional funding and when it was under discussion, I indicated to Senator Kennedy that I thought that the statute ought to have a requirement, an affirmative requirement, that when a proposed rulemaking proceeding is about to commence that the Commission seek individuals on both sides of the fence with respect to the issues that would be debated during the course of the rulemaking proceeding.

Of course, that did not happen. The motives or reasons why I do not know, but we were not aware of that at the time. Mr. Miller made me aware of it in Atlanta.

I think by that time there had been 3 or 4 weeks of hearing.

Ms. WHITNEY. In the initial stages of this investigation the FTC surveyed the funeral practices of the District of Columbia and used those results as a representative example of funeral practices across the country.

In your opinion does the District of Columbia funeral industry represent the funeral industry nationally? If not, why not?

Mr. WILLIAMS. I would like to say that at the time that survey occurred I was representing local funeral directors, called the Independent Funeral Directors Association of Washington, D.C.

To the best of my knowledge not a single funeral director member of that association of 79—the bulk of the funeral directors in the District of Columbia are black funeral directors because the city's majority population is black—not a single one of them was ever asked a single question. They never were questioned one way or another.

The parameters of the questionnaire we thought did not reach the issues that should have been reached.

At any rate, they were answered, and from that a conclusion was made. The Washington Star agreed that as a result of the tabulation of those results there was no competition among funeral directors in the District of Columbia.

If anybody who lives in the District of Columbia 30 years and has been around they would see sometimes there are fist fights over bodies. When they say there is no competition they are totally wrong.

There have been judicial determinations as to who gets the body, and that sort of thing, but the going is tough. This is especially true at the lower end of the funerals.

I would not say that Washington, D.C., is typical. I would say it would be typical of a city of approximately 500,000 to 700,000 people.

New York is quite different. Chicago is a union town, which makes it a brandnew ball game. When the union boys are in there they run the show and the funeral directors have to do what they tell them to do. That includes the gravesite and everything else.

Incidentally, Mr. Gore, one of the most serious problems funeral directors now face is the price that cemetery companies charge for real estate. The real estate is awfully expensive. That is their biggest price. It creates a lot of ill-feeling between funeral directors and families; because the families many times will think the funeral directors have to make the arrangement for the gravesite.

In the District of Columbia, at least, the funeral director has to notify the families they do not make the arrangements. They have to make their own separate arrangements for the gravesite.

However, that is an unregulated area and that is the single most expensive aspect of funerals in this community.

You have different situations in the rural communities and in the South, so it is difficult to generalize. You have to look at how urban the community is, and that sort of thing.

Ms. WHITNEY. Thank you, Mr. Williams.

Wouldn't the acts and practices here be addressable under the existing State statutes you described in your testimony, those many FTC statutes, Mr. Murchison?

Mr. MURCHISON. Yes, ma'am. I have reviewed the statutes of the 49 jurisdictions, which I mentioned earlier, and each statute is as broad or broader than the Federal Trade Commission Act itself.

Ms. WHITNEY. The modified FTC funeral rule proposal calls for price itemization, but it also states that the rule does not prohibit the offering of discounted prices to customers who desire to purchase a "package" of services or merchandise.

In your opinion will that special discounting provision guarantee that today's lower-priced funerals will remain at their current low cost?

Mr. MURCHISON. Not in my opinion, no. I have heard that proviso referred to by Mr. Kramer, and I believe I have the wording of it.

To me, if you look at it, I cannot see that it solves the problem caused by itemization, the upward pressure on prices.

Ms. WHITNEY. Is it true that during the FTC rulemaking proceeding cross-examination of the FTC staff was denied?

Mr. MURCHISON. I believe it was. As a matter of fact, cross-examination of consumers who supported the rule was denied.

However, cross-examination of funeral directors and others who opposed the rule was allowed.

No consumer witness to my knowledge was cross-examined. It was necessary to submit the questions to the presiding officer who then propounded them.

The only direct cross-examination that was permitted was in instances of witnesses who opposed the rule or witnesses appearing at the request of interested parties.

Mr. Williams was present at most of the hearings when I was not. He might correct me in this. My recollection is that if a consumer witness favored the rule he was not subject to cross-examination.

Mr. WILLIAMS J. That is correct.

Mr. MURCHISON. If he opposed the rule he was subject to direct cross-examination. It was clearly a double standard.

Ms. WHITNEY. Why in your opinion was cross-examination of the staff important to the record?

Mr. MURCHISON. I think it was touched on this morning. Where documents were received in the record which had been offered by members of the staff or compiled by members of the staff there should have been an opportunity to examine that person as to the truth of the matters asserted—not on authenticity which Mr. Kramer alluded to this morning. There was no question as to authenticity, but the opportunity to cross-examine on the document itself was denied. I think it has great probative value and it was denied.

Ms. WHITNEY. I have no further questions.

Mr. GORE. Do you remember the testimony of one Joe Todd?

Mr. WILLIAMS. I think that is the gentleman from Magnolia, Ark.

Mr. GORE. He testified in support of the rule, did he?

Mr. WILLIAMS. He testified basically in opposition to the funeral practices as he described them.

Mr. GORE. Generally in support of the rule?

Mr. WILLIAMS. Yes.

Mr. GORE. Did you cross-examine him?

Mr. WILLIAMS. Yes, I did.

Mr. GORE. I thought we just heard Mr. Murchison say that in no event someone opposing the rule got cross-examination.

Mr. WILLIAMS. That is perhaps the only one which occurred in the entire proceeding because I was a new boy on the block and I only knew how to get at the truth, by cross-examination.

The hearing examiner was enjoying the cross-examination, but as soon as Mr. Arthur Angel jumped up and objected he stopped it and at that point advised me that if we wanted to put on contrary evidence we could do so but there would be no cross-examination. If there was any cross-examination it would be by the presiding officer.

Quite often he did in an attempt to put some balance in it. In my opinion he was as good a hearing examiner as we probably could have gotten.

Mr. MURCHISON. He required us, Mr. Chairman, to submit questions to him, and then he would propound the question. That has the obvious defect of not being able to follow up.

Mr. GORE. I see.

Mr. MURCHISON. The point we were trying to make—

Mr. GORE. Of course, he could follow up. The statute authorizes cross-examination by the hearing officer, and in fact the hearing officer did cross-examine most of the witnesses.

Your point is that you as an adversary would not have had the opportunity to follow up.

Mr. MURCHISON. My point is that if Mr. Kinzler handed you five questions to ask me, I doubt very seriously whether you would remain with the five questions. If you elicited a certain answer from me you would follow up and go after certain points as they develop. That part was clearly denied.

However, we are not making that objection here. What we are saying is that he required us—

Mr. KINZLER. I want to say I am perfectly willing to have Mr. Gore follow up on my questions anyplace he wants to.

Mr. MURCHISON. Yes, but Mr. Kahn would not let me follow up.

Here was the double standard. We were required to submit our questions to the presiding officer to propound to the person supporting the rule. However, when a witness came into the hearing room opposing the rule he was subject to direct cross-examination, no questions through the presiding officer, and there was where we had that double standard.

Just as in the case of, if I may, 161 key exhibits authored by proponents of the rule. The names were masked off the exhibit so that we could not examine the writer—call him and examine him—nor could we rebut the matters asserted. These exhibits were received in evidence to prove the truth of the matters asserted, but the documents were defaced and obscured so that you had no way of testing the truth or the trustworthiness of the document.

I said 161. I want to be sure I am correct in that number. We feel that Congress never intended any such conduct as that.

Mr. GORE. I think that is a useful addition to the record.

We have really what appears to me to be an anomaly here. I may be seeing this whole thing wrong, but the final rule, the rule in its current form, as I look at it, really does appear to be an example of minimal regulation. It seems so many changes have been made, and that so many of the initial industry objections have been taken into account, and it appears to me, as you know by now, I think some action is in the public interest here, and yet this industry has become very energized against this rule. I have to believe that the manner in which it was arrived and the manner in which the proceeding was conducted had to have something to do with the atmosphere in which this conflict takes place.

Mr. WILLIAMS. That is right.

Mr. GORE. I intend to look at the statute with an open mind, I assure you, and take into account the objection that you just raised.

I would like, without objection, to leave the record open at this point to request a response from the FTC on this particular point so that it might be included in the record as well. I think it is an important point which deserves further clarification. [See p. 170.]

We have really had a ridiculously long day. Let me ask a couple brief questions, and if I might ask you to be brief in your responses.

You mentioned many FTC acts. Do you know how many require an affirmative action by the FTC before the act on the State books is triggered?

Mr. MURCHISON. I don't think any of them do. I am talking about the statutes which are called little FTC acts. The Tennessee statute stands on its own feet. It covers all the unfair and deceptive acts and practices covered by the FTC act. It is enforced by the attorney general.

Mr. GORE. What is covered by the FTC act is defined by the FTC, is it not?

Mr. MURCHISON. No. Forgive me for not making it clear. The statute in Tennessee, if we may take that prohibits unfair acts and practices in the same language.

Mr. GORE. I see.

Mr. MURCHISON. Then the remedies in the statute of Tennessee are even stricter.

Mr. GORE. All right.

Mr. Williams, on the point of public participation, did you or your association ever request funds for participating in the proceedings?

Mr. WILLIAMS. To the best of my knowledge the association never requested it. To the best of my knowledge, no one in the executive establishment of the association was ever advised that it was available to them.

Mr. GORE. You found out it was available, didn't you?

Mr. WILLIAMS. That is right.

Mr. GORE. You didn't request it after that?

Mr. WILLIAMS. The hearing was completed then. It was over.

Mr. GORE. That was after the Atlanta hearing?

Mr. WILLIAMS. Yes.

Mr. GORE. It was after the Atlanta hearing?

Mr. WILLIAMS. After the Washington hearing.

Mr. GORE. It was prior to the Atlanta hearing?

Mr. WILLIAMS. The Washington hearing was the last one.

Mr. GORE. All right.

Members of your group did testify. Is that correct?

Mr. WILLIAMS. That is probably correct; yes.

Mr. GORE. Thank you both very much. It has truly been a valuable addition to the record and I appreciate your testimony here today.

[Testimony resumes on p. 399.]

[The following information was received for the record:]

HOWREY & SIMON

1730 PENNSYLVANIA AVENUE, NORTHWEST
WASHINGTON, D. C. 20006

TELEPHONE
AREA CODE 202
783 0800

B. CHESTERFIELD OPPENHEIM
LENA LEVINE
OF COUNSEL

February 25, 1980

EDWARD F. HOWREY
DAVID C. MURCHISON
J. WALLACE ADAM
JOHN BODNER, JR.
ROBERT W. STEELE
MICHAEL W. GRANET
RICHARD T. GOLAN
RALPH J. SAWYER
RAY B. BOLJE
JOHN B. SIMMON
JOHN F. BRUCE
WILLIAM E. O'BRIEN
ALAN H. WISEMAN
RALPH BODRON
JOHN B. FORMICARI
EDWARD F. HENNEBERRY
LAWRENCE R. VELVEL
ROBERT S. ABRAMS

WILLIAM SIMON
NAROLD F. BAKER
JOHN B. VOORHEES
A. GUNCAR WHITAKER
J. COLMAN BEAN
TERRENCE C. SHEEHY
KEITH E. PUGH, JR.
JAMES F. DAVIS
FRANCIS A. O'BRIEN
WILLIAM J. BOYD
WILLIAM E. VICRENS
HARRY E. JENNINGS, JR.
ROGER C. SIMMONS
JAMES R. TOR
RICHARD A. KLEINE
HELEN W. REE
JOHN D. SIMMS II
BERNARD J. COONEY

LEWIS H. BARR
B. BRUCE BECKER
BARBARA C. BIDDLE
SEYMOUR E. BELLERSEN
JASPAAR J. BOWS
ROBERT J. BROOKHUISER, JR.
ROBERT N. BRUBER
DOUGLAS J. COLTON
JOHN A. CORNELL
ALBERT D. CORNELISON, JR.
BASIL C. CULVIN
BRUCE A. DEERSON
W. DONALD DRESHER
DAVID C. EDDY
SCOTT E. FLICK
ALFRED C. FRANKLEY
FREDERICK S. FRIE
FREDERICK R. GRAEVE
ROBERT L. GREEN
ALAN H. GRIMALDI
HELVIE L. HALPERN
RICHARD B. HARRELL
STUART H. HARRIS
W. THOMAS HAYNES
ROBERT E. HEDDA
WILLIAM A. HUNTER
RAY A. JACOBSEN, JR.
ROBERT S. JOSEPH
EUGENE H. KATZ

STEPHEN J. EDWARDS
PAUL A. KOCHER
FRANK ROBERTUS, JR.
KENNETH E. KROHN
STEPHEN F. LEARNED
BARBARA A. LEFF
LYNN IRIS LEVINE
F. BIERWOOD LEWIS
RAL K. LITCHFORD
KEVIN P. McNEERTY
JOYCE E. MAYERS
PETER E. MOLL
LESLIE A. MORGAN
ELIZABETH N. MORGAN
PAUL H. NETTESHEIM
DANIEL P. OPPENHEIM
KEVIN P. O'DOUBINE
MARK W. PERMAN
ROBERT F. RUMM
STEVEN SARFATTI
HOWARD J. SEDMAN
ABDAIL A. SHANNE
JOHN T. SHINE
L. DEL STILTNER
MARK D. WESSERER
BARDAL B. WELLS
MARCIA D. WELSH
ALBERT H. WENLEY
MARGARET N. WHIDLER

Peter Kinzler, Esquire
Subcommittee on Oversight and
Investigations
2323 Rayburn House Office Building
Washington, D. C. 20515

Re: Proposed FTC Trade Regulation Rule on
Funeral Industry Practices

Dear Mr. Kinzler:

When Larry C. Williams, Sr., and I testified before the Subcommittee on February 21, 1980, we responded to several questions relating to the extent to which cross-examination was permitted at hearings conducted by the Federal Trade Commission in the above proceeding. In the interest of accuracy, I have since checked the record and submit this letter to clarify and correct my testimony.

I enclose copy of a ruling of the Presiding Officer denying my request to conduct cross-examination. He ruled: "Though cross-examination will be allowed to a certain extent at the hearing, I cannot grant your request to cross-examine witnesses orally."

During the hearings, FTC staff counsel were permitted to examine consumer witnesses, but counsel for parties opposing the proposed rule were not permitted to cross-examine these

HOWREY & SIMON

Peter Kinzler, Esquire
February 25, 1980
Page 2

same witnesses. The Presiding Officer required opposing parties to submit any and all cross-examination questions to him.

On June 28, 1976, at hearings conducted in Atlanta, the Presiding Officer put it this way:

"Consumer witnesses, that is, consumers representing no other parties, will be examined orally by what I term friendly examiners [viz., the FTC staff], not that the others are necessarily unfriendly.

"The other questions will be written, handed to me, and I will conduct the examination from that point on." Tr. 8729.

The net effect of the Presiding Officer's rulings was that consumer witnesses testifying in support of the proposed rule were examined by FTC staff counsel but counsel for parties opposing the rule were not allowed to examine them.

The only oral cross-examination opponents were permitted to conduct related to testimony of witnesses called by other interested parties either in support or opposition to the proposed rule.

I would appreciate it if the Subcommittee will incorporate this letter in the record of the February 21 hearing as an extension and clarification of my testimony.

Respectfully submitted,

David C. Murchison

David C. Murchison
Legal Counsel for National
Selected Morticians

Enc.

cc: Honorable Bob Eckhardt
Honorable Albert Gore, Jr.
Honorable Norman F. Lent
Claire Whitney, Esquire
Larry C. Williams, Sr., Esquire

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

RECEIVED APR - 6 1976

April 6, 1976

BUREAU OF
CONSUMER PROTECTION

Mr. David C. Murchison
Howrey and Simon
1730 Pennsylvania Ave., NW
Washington, D.C. 20006

Dear Mr. Murchison:

This reply is in reference to your "Request for Opportunities for Oral Cross-Examination." This motion is denied for the following reasons:

(1) Section 1.13 (d) (5) (i) of the Commission's Rules implementing the FTC Improvement Act states:

The Presiding Officer shall conduct or allow to be conducted examination, including cross-examination or oral presentations and the presentation of rebuttal submissions relevant to the issues designated for consideration in accordance with subsection (d) (5) and (d) (6) of this section.

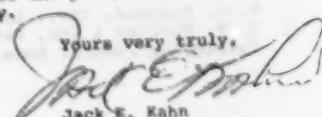
As this section states, cross-examination shall be conducted or allowed, but it does not give persons the right to cross-examine witnesses orally.

(2) Though cross-examination will be allowed to a certain extent at the hearings, I cannot grant your request to cross-examine witnesses orally. The Commission has charged me with the responsibility and power to "prescribe rules or issue rulings to avoid unnecessary costs or delay," (Section 1.13 (c) (i) (IV)), and allowing across the board oral cross-examination would only subvert this rule.

(3) It is understood that cross-examination will be necessary to attempt to refute allegations of various other persons, but it shall be in written form unless I shall rule otherwise. I shall utilize the discretionary right to cross-examine witnesses orally at the hearings.

Certification is also denied since I do not believe this question involves a controlling question of law or policy in which there is substantial ground for difference of opinion, nor will an immediate review of the ruling materially advance the ultimate termination of the proceeding. Subsequent review will be an adequate remedy.

Yours very truly,


Jack E. Kahn
Presiding Officer

EDWARD F. HUNNET
DAVID C. HUNTER
J. WALLACE ADAM
JOHN B. BROWN, JR.
ROBERT W. STEELE
MICHAEL W. BRANT
RICHARD T. ORLANDO
RALPH J. SCHWARTZ
RAY B. BALE
JOHN S. KIRKMAN
JOHN F. BRUCE
WILLIAM R. O'BRIEN
ALAN H. WISEMAN
RALPH SCHWARTZ
JOHN P. FOMMELT
EDWARD P. HENNEBERG
LAWRENCE H. VIGIL
ROBERT G. ABRAMS

WILLIAM BERRY
WILLIAM F. BERRY
JOHN S. VORHIES
J. BURGESS WATKINS
J. COLEMAN BERN
TERENCE C. BERRY
RUTH E. PUGH, JR.
JAMES F. BERRY
FRANK A. O'BRIEN
WILLIAM J. BERRY
WILLIAM E. WICKENS
HAROLD E. JOHNSON, JR.
ROBERT C. BURGESS
JAMES B. FOX
RICHARD A. BERRY
WILLIAM H. BERRY
JOHN S. BERRY
EDWARD J. COBBY

HOWREY & SIMON

1730 PENNSYLVANIA AVENUE, NORTHWEST
WASHINGTON, D.C. 20006

TELEPHONE
AREA CODE 202
783-0800

B. CHRISTOPHER OPPENHEIM
CORA LEVINE
OF COUNSEL

March 25, 1980

LEWIS W. BARR
R. BRUCE BECKMAN
BARBARA C. BRIDLE
GEORGE B. DILLINGER
BARBARA J. BOND
ROBERT J. BROOKHUISER, JR.
ROBERT M. BRADSHAW
DOUGLAS J. COUCH
JOHN A. CORRELL
ALBERT O. CORNELIUSSEN, JR.
BASIL C. CULVIN
BRUCE A. DICKSON
W. DONALD DRESSER
DAVID C. EYRE
SCOTT E. FLYCH
ALFRED C. FRANKET
FREDERICK S. FINE
FREDERICK H. FINE
ROBERT L. FINE
ALAN H. GORRASSI
MELVIN L. HILFMAN
RICHARD S. HANWELL
STUART H. HARRIS
W. THOMAS HAYNES
W. HERBERT HERR
WILLIAM J. HUNTER
BOB A. JACOBSEN, JR.
ROBERT J. JOSEPH
EUGENE H. KATZ

STEPHEN O. KENNARD
PAUL A. KOCHE
FRANK ROSSORUS, JR.
KENNETH E. KRUGER
STEPHEN P. LEAHY
BARBARA J. LEFF
LYNN ANN LEVINE
F. SHEPHERD LEWIS
DALE L. LITCHFORD
SEVIN R. MCHERRY
JOYCE E. MCHERRY
PETER E. MCHERRY
LESLIE A. MCHERRY
ELEAZAR H. NORMAN
PAUL H. NORTON
DANIEL V. OPPENHEIM
SEVIN P. OPPENHEIM
DAVID W. PERLIN
ROBERT F. RYAN
STEVEN SANDRITTI
HOWARD J. SCHWARTZ
LEONARD A. SCHWARTZ
JOHN T. SHAW
L. DAN STEIN
MARY D. WESSENER
RANDALL S. WELLS
MARGA O. WELLS
ALBERT H. WENDLER
MARGARET H. TWILAR

Peter Kinzler, Esq.
Subcommittee on Oversight and
Investigations
2323 Rayburn House Office Building
Washington, D. C. 20515

Re: Proposed FTC Trade Regulation Rule
on Funeral Industry Practices

Dear Mr. Kinzler:

Supplementing our letter of February 25, 1980, and in response to the request of Mr. Gore at the hearing on February 21, 1980, that we supply the Subcommittee and the hearing record with supporting information regarding funeral price surveys in Virginia and Texas concerning the increases in funeral prices caused by mandatory price itemization, we hereby enclose for the record an affidavit of Fred L. Bates, Assistant Executive Director of National Selected Morticians, setting forth the data collected and the method of collection. In response to Mr. Gore's request, the following are the names of the funeral establishments surveyed:

Virginia

W. D. Diuguid, Inc., Lynchburg
J. T. Morriss & Son, Petersburg
Cunningham Funeral Home, Alexandria

HOWREY & SIMON

Peter Kinzler, Esq.
March 25, 1980
Page No. 2

Hamrick & Company, Staunton
M. P. Carder Company, Bedford
D. R. Henderson Funeral Home, Saltville
Frank A. Bliley Funeral Home, Richmond
Farris Funeral Service, Abingdon
Powell Funeral Home, South Boston
Richardson-Horne Funeral Home, Christiansburg
Robert J. Murphy Funeral Home, Arlington
John M. Oakey, Inc., Roanoke

Texas

Burks-Walker-Tippit Funeral Home, Tyler
Darling-Mouser Funeral Home, Brownsville
Harveson & Cole, Fort Worth
Crosier-Pearson Funeral Home, Cleburne
Harding-Orr & McDaniel Funeral Homes, El Paso
Crawford-A. Crim Funeral Home, Henderson
Hanner Funeral Service, Atlanta
Grimes-Plummer Funeral Home, Kerrville
Broussard Mortuary, Beaumont
Williams Funeral Directors, Garland
Thompson Funeral Directors, Jacksonville
Wise Funeral Home, Bonham
J. E. Stevens Funeral Home, Coleman
Gipson Funeral Home, Lufkin
Reeder-Davis Funeral Home, Hughes Springs
Forest Park Funeral Home, Houston
Pace-Stancil Funeral Home, Cleveland
Elliott-Hamil Funeral Home, Abilene
Porter Loring Mortuary, San Antonio
Edgar Funeral Home, Burnet
Ross Langham Mortuary, Corpus Christi
Eckols Funeral Home, Kenedy
Carmichael-Whatley Funeral Directors, Pampa

Since NSM's surveys collected no other data and since Mr. Gore stated that the Subcommittee was not asking us to conduct a special survey, we are unable, at this time, to supply the other information requested. Moreover, NSM has conducted no surveys in Maryland or Oklahoma.

HOWREY & SIMON

Peter Kinzler, Esq.
March 25, 1980
Page No. 3

We are also hereby submitting our corrected version of the hearing transcript, as requested, together with a further copy of my letter of February 25, 1980, which I ask be made a part of the record following my testimony.

Respectfully submitted,

David C. Murchison

David C. Murchison
Legal Counsel for National
Selected Morticians

jed

Enclosures

AFFIDAVIT OF
FRED L. BATES

State of Illinois }
 } ss.
County of Cook }

Fred L. Bates, being duly sworn, deposes and says:

1. I am Assistant Executive Director of National Selected Morticians (hereinafter referred to as NSM), 1616 Central Street, Evanston, Illinois 60201, a trade association of 950 funeral service establishments located throughout the United States and in twelve foreign countries.
2. This affidavit sets forth new evidence of the effect of price itemization on funeral prices.
3. Subsequent to September 1, 1979, the effective date of a mandatory funeral price itemization requirement enacted by the State of Texas, I contacted by telephone all the funeral firms in Texas that are members of NSM and ascertained which of these firms had utilized unit pricing prior to September 1, 1979, and therefore had to switch over to price itemization on that date.
4. I requested and obtained on a confidential basis from those NSM member firms in Texas previously utilizing unit pricing the prices of their previous four lowest unit-priced standard funerals and the comparable prices of their present four lowest-priced standard funerals derived from totaling the now-required itemized prices of the components.

5. Assigning numbers to those member firms able to respond with this type of information, I received the following sets of figures:

Funeral Firm	Four Lowest- Priced Funerals Under Unit Pricing	Four Lowest- Priced Funerals Under Itemization	Dollar Increase	Percentage Increase
No. 1	\$ 350	\$ 806	\$456	130%
	595	840	245	42
	698	861	163	23
	895	904	9	1
No. 2	575	970	395	69
	908	1045	137	15
	1135	1155	20	2
	1294	1294	0	0
No. 3	997	1255	258	26
	1193	1295	102	9
	1389	1389	0	0
	1487	1487	0	0
No. 4	998	1097	99	10
	1169	1198	29	2
	1195	1240	45	4
	1324	1419	95	7
No. 5	699	1028	329	47
	957	1087	130	14
	1087	1160	73	7
	1100	1256	156	14
No. 6	763	1022	259	34
	850	1094	244	29
	915	1202	287	31
	990	1278	288	29
No. 7	695	1028	333	48
	895	1193	298	33
	945	1291	346	37
	1095	1541	446	41
No. 8	890	1150	260	29
	1045	1275	230	22
	1175	1440	265	23
	1330	1490	160	12

Funeral Firm	Four Lowest- Priced Funerals Under Unit Pricing	Four Lowest- Priced Funerals Under Itemization	Dollar Increase	Percentage Increase
No. 9	\$ 895	\$1028	\$133	15%
	995	1193	198	20
	1095	1291	196	18
	1295	1389	94	7
No. 10	897	1060	163	18
	970	1175	205	21
	1098	1275	177	16
	1270	1370	100	8
No. 11	796	1033	237	30
	889	1072	183	21
	991	1093	102	10
	998	1092	94	9
No. 12	695	1090	395	57
	1156	1236	80	7
	1348	1388	40	3
	1440	1520	80	6
No. 13	1048	1220	172	16
	1205	1395	190	16
	1387	1505	118	9
	1479	1671	192	13
No. 14	895	1064	169	19
	1125	1245	120	11
	1395	1490	95	7
	1495	1575	80	5
No. 15	792	1151	359	45
	1047	1221	174	17
	1095	1288	193	18
	1255	1371	116	9
No. 16	995	1355	360	36
	1075	1395	320	30
	1195	1475	280	23
	1295	1525	230	18
No. 17	895	1195	300	34
	995	1295	300	30
	1095	1395	300	27
	1195	1495	300	25

Funeral Firm	Four Lowest- Priced Funerals Under Unit Pricing	Four Lowest- Priced Funerals Under Itemization	Dollar Increase	Percentage Increase
No. 18	\$ 747	\$ 897	\$150	204
	947	1047	100	11
	1087	1287	200	18
	1367	1487	120	9
No. 19	865	1043	178	21
	950	1143	193	20
	1050	1243	193	18
	1195	1358	163	14
No. 20	995	995	0	0
	1195	1335	140	12
	1295	1427	132	10
	1295	1456	161	12
No. 21	850	1478	628	74
	1350	1506	156	12
	1465	1665	200	14
	1598	1745	147	9
No. 22	695	1310	615	88
	895	1395	500	56
	995	1465	470	47
	1095	1495	400	37
No. 23	475	833	358	75
	695	865	170	24
	695	865	170	24
	785	905	120	15

6. Upon application of appropriate calculations to these figures, I arrived at the following conclusions:

After September 1, 1979, the effective date of the new statute, the average lowest-priced funeral increased by \$287, or 41 percent, and the average price increase for the four lowest-priced funerals was \$202, or 23 percent.

7. Subsequent to October 1, 1979, the effective date of a mandatory funeral price itemization requirement enacted

by the Commonwealth of Virginia, I contacted by telephone all the funeral firms in Virginia that are members of NSM and ascertained which of these firms had utilized unit pricing prior to October 1, 1979, and therefore had to switch over to price itemization on that date.

8. I requested and obtained on a confidential basis from those NSM member firms in Virginia previously utilizing unit pricing the prices of their previous four lowest unit-priced standard funerals and the comparable prices of their present four lowest-priced standard funerals derived from totaling the now-required itemized prices of the components.

9. Assigning numbers to those member firms able to respond with this type of information, I received the following sets of figures:

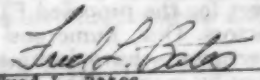
Funeral Firm	Four Lowest-Priced Funerals Under Unit Pricing	Four Lowest-Priced Funerals Under Itemization	Dollar Increase	Percentage Increase
No. 1	\$1050	\$1451	\$ 401	38%
	1486	1486	0	0
	1626	1626	0	0
	1776	1776	0	0
No. 2	595	1096	501	84
	865	1191	326	38
	1050	1249	199	19
	1180	1439	259	22
No. 3	985	1483	498	51
	1105	1528	423	38
	1340	1590	250	19
	1374	1608	234	17

<u>Funeral Firm</u>	<u>Four Lowest- Priced Funerals Under Unit Pricing</u>	<u>Four Lowest- Priced Funerals Under Itemization</u>	<u>Dollar Increase</u>	<u>Percentage Increase</u>
No. 4	\$ 935	\$1385	\$ 450	48%
	1080	1575	495	46
	1345	1635	290	22
	1475	1740	265	18
No. 5	695	895	200	29
	795	995	200	25
	895	1095	200	22
	995	1195	200	20
No. 6	750	1431	681	91
	950	1467	517	54
	1395	1680	285	20
	1675	1695	20	1
No. 7	975	1476	501	51
	1255	1585	330	26
	1465	1739	294	20
	1675	1829	154	9
No. 8	850	1850	1000	118
	895	1925	1030	115
	1050	2017	967	92
	1275	2140	865	68
No. 9	888	1158	270	30
	998	1300	302	30
	1140	1410	270	24
	1250	1505	255	20
No. 10	795	1250	455	57
	995	1300	305	31
	1295	1710	415	32
	1545	1800	255	17
No. 11	793	944	151	19
	875	1095	220	25
	944	1150	206	22
	1095	1182	87	8
No. 12	795	998	203	26
	995	1269	274	28
	1050	1309	259	25
	1150	1390	240	21

10. Upon application of appropriate calculations to these figures, I arrived at the following conclusions:

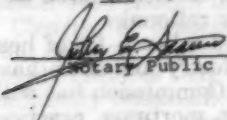
After October 1, 1979, the effective date of the new statute, the average lowest-priced funeral increased by \$443, or 54 percent, and the average price increase for the four lowest-priced funerals was \$338, or 34 percent.

11. The foregoing is true and correct to the best of my knowledge.


Fred L. Bates

Dated: 3-18-80

Subscribed and sworn to before me this 18th day of March, 1980.


Notary Public

Mr. GORE. We have one other witness. I would like to call Mr. Eric Shulman, from the National Council of Senior Citizens, as our last witness today.

Please stand and be sworn. Do you swear the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SHULMAN. I do.

Mr. GORE. Again our apologies that the hearing has taken so long today. Our appreciation for your patience. You may proceed to present it as you see fit.

TESTIMONY OF ERIC SHULMAN, NATIONAL COUNCIL OF SENIOR CITIZENS

Mr. SHULMAN. I would like to thank you for this opportunity to present the views of the National Council of Senior Citizens. I speak today on behalf of 3.5 million older Americans that NCSC represents—the vast majority of whom have been touched, at one time or another, by the tragedy of death. But I do not come here armed with letters from our members attesting to bad experiences they may have had with funeral homes or funeral directors. This is because people are often unaware that they may be paying an excessive price for a funeral or that the services they expect to be included in a package deal in fact cost extra. The cost of death is

not something that people discuss and few of us faced with grief over the loss of a loved one are likely to engage in competitive shopping.

Although we know of countless instances of deception and even outright fraud, we are sure that many of the country's funeral directors are honest, compassionate people. The real issue here is the vulnerability of consumers and the necessity for assuring that pertinent pricing information is available. Thus, even in a time of grief, bereaved relatives will be able to make rational decisions about the type of funeral they can afford. After the purchase of a house and a car, a funeral is often the next largest purchase consumers make and they should not be asked to do so on the basis of the limited information currently offered.

Our support for the proposed FTC trade regulation rule is based on three factors. One, numerous investigations—both inside and outside Government—have documented irresponsible and unethical sales practices by many of the Nation's 22,500 funeral homes. Two, the nature of the funeral home business is such that its clientele is generally uninformed and vulnerable to a variety of sales tactics. And, three, the rule itself which, in its limited form, provides basic protection for bereaved consumers and allows them to make logical, rational choices about the type of funeral service desired at a time when many people are neither logical nor rational.

The Federal Trade Commission has recently taken a lot of heat over its investigation of the funeral home industry and some have said that it reflects some type of vendetta the Commission has with the industry. But the fact is that America's mortuary practices have been under attack ever since Mark Twain complained about the high cost of a coffin—\$26—in his book "Life on the Mississippi."

Over the past 20 years investigations by countless newspapers have revealed the difficulty consumers face in trying to obtain low-cost funerals. Inexpensive coffins may be unavailable or not displayed, pressure on purchasers to pay for expensive floral arrangements, limousines and large headstones is widespread. In addition, a large majority of funeral directors use package deals, often refusing to give price quotes over the phone or a breakdown of itemized costs despite the fact that most people would like specific prices.

The funeral home industry today is big business. Gross receipts last year totaled \$5.4 billion with the average price of a funeral exceeding \$2,400. While many of these funeral homes may be classified as small businesses, the fact remains that the purchase of a funeral is often a major financial undertaking, and it is completed under extreme time pressure without much knowledge and often in a state of severe anguish. All of these facts coupled with documented abuses by the industry indicate the need for regulation.

The pressure to sell high-cost funerals is tremendous because of the relative inelasticity of the market. Unlike most industries, consumer demand for funeral services is not susceptible to increase by such devices as advertising. Therefore, the industry, in order to survive, must depend on low-volume, high-profit sales. Professionalism aside, the "hard-sell" inevitably emerges if the business is to make money. And no one ought to be deluded into thinking of this as anything but a business—clearly the American Funeral Direc-

tors Association does. In a recent article published in their trade magazine, they say that the bottoming out of the death rate decline is reason for "cautious optimism" among funeral directors. The tragedy, of course, is that pitted against such pressures is the consumer's anxiousness to let someone else take care of the details and unawareness of the costs involved. We believe that the loss of a loved one is sufficient enough a tragedy that one should not have to be reminded of it by monthly installments to cover the cost of a funeral.

NCSC finds it extremely difficult to understand the intensity of opposition to the FTC rule. As we understand it, Mr. Chairman, the rule would do four things:

One, require funeral directors to give clients an itemized list detailing the cost of the casket, embalming, hearses and limousines and other services offered.

Two, prohibit funeral directors from embalming the remains without specific authorization or from claiming that embalming is required by law in all cases.

Three, prohibit funeral directors from falsely claiming that cemetries require metal or concrete enclosures for caskets.

Four, prohibit funeral homes from requiring relatives to buy a casket even though the body was cremated.

Clearly, the concept of price disclosure is reasonable enough. The rule does not suggest that package deals should be prohibited; it simply requires that the specific costs be itemized. Yet this simple, eminently reasonable requirement has the funeral home trade association up in arms. Parts 2 and 3 of the rule require the funeral director to tell the truth. And part 4 allows relatives to save money by not purchasing a casket which would be incinerated in any event.

I believe this latter requirement is indicative of the pressing need for Federal regulation of the funeral home industry. While the folly of requiring a casket in the case of cremation is clear, two States that we know of—Wisconsin and Massachusetts—have such a regulation. The regulatory and licensing boards in these and 42 other States are dominated by undertakers and embalmers—people who often exercise considerable political influence in local communities. Without some kind of Federal intervention, self-serving State regulations will be promulgated at the expense of American consumers.

The overall impact of the FTC funeral rule will be to insure that consumers who wish to will be able to make informed decisions about the funeral service they desire. It will insure that misleading and deceptive sales practices are reduced or eliminated and it will instill competition by requiring price disclosures.

I would not want to conclude this statement without making reference to the issue of overregulation by the Federal Government. In our opinion this is simply a smokescreen behind which many funeral directors try to hide their greed for higher profits. The funeral rule merely requires certain standardized informational forms and an itemized sales memorandum. How these can be viewed as a tremendous financial burden, even for small establishments, is difficult to imagine, since they are routine in many other small businesses and are easily formalized. Whatever additional

costs that may be associated with itemization are ones that I am sure consumers would be happy to bear, especially if it means less financial burden on a deceased person's living relatives.

Mr. Chairman, the conference on the FTC reauthorization is fast approaching and the National Council of Senior Citizens will urge the conferees to reject the House-passed provision killing the funeral rule. The Federal Trade Commission has been studying this issue for several years now, and the revised rule is a reasonable approach that will aid consumers without inflicting unnecessary hardship on the industry. We think it is long past the time for implementation of the funeral rule and we plan to do our part to reach that end. Thank you.

Mr. GORE. An excellent statement.

Ms. Whitney?

Ms. WHITNEY. Can you tell us how many specific complaints you receive per year from your membership concerning services and practices?

Mr. SHULMAN. We have in our files complaints we have received, but, as I stated, that is not the kind of thing that even our members, and our members are prolific when it comes to writing, either talk about, write about, or want to discuss. It is difficult to get an educated comparison about the cost of funerals from one funeral home to another, which is the kind of complaint we would receive, when it is not the kind of thing people do every day or even very often.

We do have in our files some complaints generally about the cost of funerals, but there is nothing very specific. I will admit we don't have that many.

Ms. WHITNEY. You represent a group comprised of senior citizens.

Mr. SHULMAN. We do.

Ms. WHITNEY. I would think of all the groups in the country they certainly would be the ones talking about funerals or impending funerals.

Mr. SHULMAN. I would disagree with that. I think frankly they are one of the groups less likely to talk about funerals.

Ms. WHITNEY. I have no further questions.

Mr. GORE. Because they don't like to think about it?

Mr. SHULMAN. It is not something they discuss widely, I think.

Mr. GORE. I thought your statement was excellent. I appreciate your patience in waiting until the end of a long day and then presenting us with such a good statement.

Mr. SHULMAN. Thank you.

Mr. GORE. This hearing stands adjourned.

[Whereupon, at 5:30 p.m., the hearing adjourned.]